



भारत का राजपत्र

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सं. 26] नई दिल्ली, जून 25—जुलाई 1, 2017, शनिवार/आषाढ़ 4—आषाढ़ 10, 1939

No. 26] NEW DELHI, JUNE 25—JULY 1, 2017, SATURDAY/ASADHA 4—ASADHA 10, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

गृह मंत्रालय

नई दिल्ली, 27 जून, 2017

का.आ. 1504.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथा संशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, गृह मंत्रालय के निम्नलिखित कार्यालयों में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरूप इन, कार्यालयों को एतद्वारा अधिसूचित करती है:-

केन्द्रीय रिजर्व पुलिस बल

- कार्यालय पुलिस उप महानिरीक्षक (चिकित्सा), संयुक्त अस्पताल, केरिपु बल,
नागपुर (महाराष्ट्र)
- कार्यालय प्राचार्य, केन्द्रीय प्रशिक्षण महाविद्यालय, केरिपु बल,
ग्वालियर (मध्य प्रदेश)

सशस्त्र सीमा बल

- कार्यालय महानिरीक्षक, सीमान्त मुख्यालय पटना, सशस्त्र सीमा बल, अशीना नगर,
जिला-पटना (बिहार) पिन-800025
- कार्यालय महानिरीक्षक, सीमान्त मुख्यालय, सशस्त्र सीमा बल, रानीखेत,
जिला-अल्मोड़ा (उत्तराखण्ड) पिन-263645

3. कार्यालय उप महानिरीक्षक सेक्टर मुख्यालय, सशस्त्र सीमा बल, गोरखपुर, फर्टिलाइजर फैक्टरी, उर्वरक नगर, गोरखपुर (उत्तर प्रदेश) पिन-273007
4. कार्यालय उप महानिरीक्षक, सेक्टर मुख्यालय, सशस्त्र सीमा बल, लखीमपुर खीरी जिला-लखीमपुर खीरी (उत्तर प्रदेश) पिन-262701
5. कार्यालय उप महानिरीक्षक, सेक्टर मुख्यालय, सशस्त्र सीमा बल, पोस्ट बॉक्स नं. 25, जिला-पूर्णिया (विहार) पिन-854301
6. कार्यालय उप महानिरीक्षक, सेक्टर मुख्यालय, सशस्त्र सीमा बल, उप डाकघर-उमानगर, जिला मुजफरपुर (विहार) पिन-842001
7. कार्यालय उप महानिरीक्षक, सेक्टर मुख्यालय, सशस्त्र सीमा बल, अल्मोड़ा जिला-अल्मोड़ा (उत्तराखण्ड) पिन-263601
8. कार्यालय उप महानिरीक्षक, सेक्टर मुख्यालय, सशस्त्र सीमा बल, पीलीभीत, जिला-पीलीभीत (उत्तर प्रदेश) पिन-262001
9. कार्यालय वरिष्ठ अनुदेशक, फ्रंटीयर अकादमी, सशस्त्र सीमा बल, डाकघर-ग्वालदम, अल्मोड़ा (उत्तराखण्ड) पिन-246441
10. कार्यालय उप महानिरीक्षक, प्रशिक्षण केन्द्र, सशस्त्र सीमा बल, उर्वरक नगर गोरखपुर (उत्तर प्रदेश) पिन-273007
11. कार्यालय कमांडेट, सीएसडी एण्ड डब्ल्यू, सशस्त्र सीमा बल, केन्द्रीय टी.टी. नगर, भोपाल (मध्य प्रदेश) पिन-462003
12. कार्यालय कमांडेट, 1 वीं वाहिनी, सशस्त्र सीमा बल, नौतनवा जिला-महाराजगंज (उत्तर प्रदेश) पिन-273264
13. कार्यालय कमांडेट, 2 वीं वाहिनी, सशस्त्र सीमा बल, पट्टन जिला-बारामूला (जम्मू और कश्मीर) पिन-193121
14. कार्यालय कमांडेट, 3 वीं वाहिनी, सशस्त्र सीमा बल, लखीमपुर खीरी, जिला-लखीमपुर खीरी (उत्तर प्रदेश) पिन-62701
15. कार्यालय कमांडेट, 4 वीं वाहिनी, सशस्त्र सीमा बल, डाकघर-काली पश्चिम, जिला-लखनऊ (उत्तर प्रदेश) पिन-223601
16. कार्यालय कमांडेट, 5 वीं वाहिनी, सशस्त्र सीमा बल, चम्पावत, पोस्ट एवं जिला-चम्पावत (उत्तराखण्ड) पिन-262523
17. कार्यालय कमांडेट, 6 वीं वाहिनी, सशस्त्र सीमा बल, डाकघर-खेड़ा जिला-जमुई (विहार) पिन-811317
18. कार्यालय कमांडेट, 9 वीं वाहिनी, सशस्त्र सीमा बल, बलरामपुर जिला-बलरामपुर (उत्तर प्रदेश) पिन-271201
19. कार्यालय कमांडेट, 11 वीं वाहिनी, सशस्त्र सीमा बल, डाकघर-डिडिहाट जिला-पिथौरागढ़ (उत्तराखण्ड) पिन-261551
20. कार्यालय कमांडेट, 12 वीं वाहिनी, सशस्त्र सीमा बल, डाकघर-किशनगंज जिला-किशनगंज (विहार) पिन-855107
21. कार्यालय कमांडेट, 20 वीं वाहिनी, सशस्त्र सीमा बल, डाकघर-पकटोला वाया दुमरा सीतामढ़ी, जिला-सीतामढ़ी (विहार) पिन-843302
22. कार्यालय कमांडेट, 25 वीं वाहिनी, सशस्त्र सीमा बल, घिटोरनी, डाकघर-अर्जनगढ़, घिटोरनी, नई दिल्ली, पिन-110047
23. कार्यालय कमांडेट, 26 वीं वाहिनी, सशस्त्र सीमा बल, रांची, गांव-खतंगा, डाकघर-सुगनू जिला-रांची (झारखण्ड) पिन-835103

24. कार्यालय कमांडेंट, 27 वीं वाहिनी, सशस्त्र सीमा बल, झापा, डाकघर-उमानगर
जिला-मुजफ्फरनगर (बिहार) पिन-842004
25. कार्यालय कमांडेंट, 28 वीं वाहिनी, सशस्त्र सीमा बल, अंतगढ़, डाकघर-अंतगढ़
जिला-कांकेर (छत्तीसगढ़) पिन-494665
26. कार्यालय कमांडेंट, 35 वीं वाहिनी, सशस्त्र सीमा बल, राजनगर, डाकघर-राजनगर
जिला-मधुवनी (बिहार) पिन-847235
27. कार्यालय कमांडेंट, 40 वीं वाहिनी, सशस्त्र सीमा बल, पटना, दानापुर
जिला-पटना (बिहार) पिन-801503
28. कार्यालय कमांडेंट, 45 वीं वाहिनी, सशस्त्र सीमा बल, डाकघर-बीरपुर
जिला-सुपौल (बिहार) पिन-854340
29. कार्यालय कमांडेंट, 51 वीं वाहिनी, सशस्त्र सीमा बल, सीतागढ़ी-II,
डाकघर-सोनबरसा, जिला-सीतामढी (बिहार) पिन-843330
30. कार्यालय कमांडेंट, 55 वीं वाहिनी, सशस्त्र सीमा बल, पिथौरागढ़,
डाकघर-एचौली, जिला-पिथौरागढ़, (उत्तराखण्ड) पिन-262530
1. **महानिदेशालय,**
राष्ट्रीय आपदा मोर्चन बल मुख्यालय,
पं. दीनदयाल अंत्योदय भवन
9वीं मंजिल, केन्द्रीय कार्यालय परिसर,
लोदी रोड, नई दिल्ली-110003

स्वापक नियंत्रण ब्यूरो

1. उप महानिदेशक (उ. क्षेत्र) का कार्यालय
स्वापक नियंत्रण ब्यूरो
पश्चिमी खंड 1, विंग सं. 5,
रामकृष्ण पुरम, नई दिल्ली-110066
2. क्षेत्रीय निदेशक,
स्वापक नियंत्रण ब्यूरो,
दिल्ली क्षेत्रीय इकाई, पश्चिमी खंड 1
विंग सं. 5 रामकृष्णपुरम, नई दिल्ली-110066
3. क्षेत्रीय निदेशक,
स्वापक नियंत्रण ब्यूरो,
पटना क्षेत्रीय इकाई
67, कॉटिल्य नगर,
पटना (बिहार)
4. क्षेत्रीय निदेशक,
स्वापक नियंत्रण ब्यूरो,
लखनऊ क्षेत्रीय इकाई,
बी-912, सेक्टर-ए
सी.आई.डी. कॉलोनी,
महानगर लखनऊ (उ.प्र.) – 226016
5. क्षेत्रीय निदेशक,
स्वापक नियंत्रण ब्यूरो,
इंदौर क्षेत्रीय इकाई, अरण्य,
पी.ओ. विजय नगर,
इंदौर (म.प्र.) – 452010

[सं. 12017/01/2012-हिन्दी]

सहेली घोष रॉय, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

New Delhi, the 27th June, 2017

S.O. 1504.—In pursuance of sub rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the following office of the Ministry of Home Affairs, wherein the percentage of the staff, having working knowledge of Hindi has gone above 80% :—

Central Reserve Police Force

1. Office of the Dy.Inspector General of Police (Medical)
Composite Hospital,CRPF, Nagpur (Maharashtra)
2. Office of the Principal, Central Training College, CRPF
Gwalior (M.P.)

Sashastra Seema Bal

1. Office of the Inspector General FTR , SSB, Patna,
Ashina Nagar, Distt-Patna (Bihar) Pin-800025
2. Office of the Inspector General FTR , SSB, Ranikhet
Distt- Almora (Uttarakhand)
3. Office of the Deputy Inspector General SHQ, FTR, SSB,
Gorakhpur Fertilizer Factory, Urvarak Nagar,
Gorakhpur (U.P.) Pin-273007
4. Office of the Deputy Inspector General, SHQ, SSB,
Lakhimpur Kheri, Distt- Lakhimpur Kheri (U.P.) Pin-262701
5. Office of the Deputy Inspector General SHQ, SSB, Purnia,
Post Box No. 25, Distt-Purnia (Bihar) Pin-854301
6. Office of the Deputy Inspector General SHQ, SSB,
Muzaffarpur, Sub Post Office-UMA Nagar, Distt-Muzaffarpur,
(Bihar) Pin-263601
7. Office of the Deputy Inspector General SHQ,SSB,
Almora (Uttarakhand) Pin-263601
8. Office of the Deputy Inspector General SHQ, SSB, Pilibhit
Distt-Pilibhit (U.P.) Pin-262001
9. Office of the Senior Instructor, Frontier Academy, SSB,
Post-Gwladam , Almora (Uttrakhand) Pin-246441
10. Office of the Deputy Inspector General, Training Centre, SSB
Gorakhpur, Post- Fertilizer Factory, Urvark Nagar, Gorakhpur (U.P.)
Pin-273007
11. Office of the Commandant, CSD & W, SSB, Post- Central T.T Nagar
Bhopal (M .P.) Pin-462003
12. Office of the Commandant, 1st Bn SSB, Maharajganj, Post-Nautanwa,
Distt- Maharajganj, Pin-273164
13. Office of the Commandant, 2nd Bn SSB, Post-Pattan,
Distt-Baramulla,(J&K) Pin- 193121
14. Office of the Commandant, 3rd Bn SSB, Lakhimpur Kheri,
Garhi Road , Post & Distt- Lakhimpur Kheri (U.P.) Pin-62701
15. Office of the Commandant, 4th Bn SSB, Lucknow, Post-Kalli Pachhim
Distt-Lucknow (U.P.) Pin- 223601
16. Office of the Commandant, 5th Bn SSB, Champawat,
Post & Distt-Champawat (Uttarakhand)
17. Office of the Commandant, 6th Bn SSB, Pakri Khaira, Post- Pakri Khaira,
Distt-Jamui (Bihar) Pin-811317

18. Office of the Commandant, 9th Bn SSB, Balarampur,
Post & Distt- Balarampur, (U.P.) Pin-271201
19. Office of the Commandant, 11th Bn SSB, Didihat, Post-Didihat
Distt-Pithoragarh, (Uttarakhand) Pin-261551
20. Office of the Commandant, 12th Bn SSB, Post-Kishanganj
Distt- Kishanganj (Bihar) Pin-855107
21. Office of the Commandant, 20th Bn SSB, Post-Paktola via Dumra Sitamarhi,
Distt-Sitamarhi (Bihar) Pin-843302
22. Office of the Commandant, 25th Bn SSB, Ghitorani, Post-Arjangarh,
Ghitorani, New Delhi, Pin-110047
23. Office of the Commandant, 26th Bn SSB, Ranchi, Vill-Khatanga
Post-Sugnu , Distt-Ranchi (Jharkhand) Pin-835103
24. Office of the Commandant, 27th Bn SSB, Jhapaha, Post- Uma Nagar
Distt-Muzaffarpur (Bihar) Pin-842004
25. Office of the Commandant, 28th Bn SSB, Antagarh, Post- Antagarh,
Distt-Kanker (Chhattisgarh) Pin-494665
26. Office of the Commandant, 35th Bn SSB, Rajnagar, Post- Rajnagar
Distt-Madhubani (Bihar) Pin-847235
27. Office of the Commandant, 40th Bn SSB, Patna, Danapur,
Patna (Bihar) Pin-801503
28. Office of the Commandant, 45th Bn SSB, Birpur, Post-Birpur
Distt-Supaul (Bihar) Pin-847235
29. Office of the Commandant, 51th Bn SSB, Sitamarhi-II, Post-Sonbarsa
Distt-Sitamarhi (Bihar) Pin-843330
30. Office of the Commandant, 55th Bn SSB, Pithoragarh, Post-Aicholi
Distt-Pithoragarh (Uttarakhand) Pin-262530

1. Directorate General,

**National Disaster Response Force,
Pt. Deendayal Antyodaya Bhawan,
B-2 wing, 9th floor, CGO Complex,
New Delhi-110003**

Narcotics Control Bureau

1. Office of Dy. Dir. Gen (North Zone)
Narcotics Control Bureau,
West Block -I , Wing No. 5,
R.K. Puram,
New Delhi-110066
2. Regional Director,
Narcotics Control Bureau,
Delhi Regional Unit, West Block –I
Wing No. 5, R.K.Puram
New Delhi-110066
3. Regional Director,
Narcotics Control Bureau,
Patna Regional Unit,
67, Kautilya Nagar ,
Patna (Bihar)
4. Regional Director,
Narcotics Control Bureau,
Lucknow Regional Unit,

B-912,Sector-A,
C. I. D. Coloney,
Metrocity Lucknow (U.P.) -226016

5. Regional Director,
Narcotics Control Bureau,
Indore Regional Unit,
P. O. Vijay Nagar,
Indore (M.P.)-452010

[No. 12017/01/2012-Hindi]

SEHELI GHOSH ROY, Jt. Secy.

वित्त मंत्रालय

(राजस्व विभाग)

(हिंदी अनुभाग-2)

नई दिल्ली, 27 जून, 2017

का.आ. 1505.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, राजस्व विभाग के अधीन केन्द्रीय उत्पाद शुल्क मण्डल कार्यालय अंबाला शहर को, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-11017/2/2017-हिंदी-II (डीओआर-डीओआर)]

डॉ. सतीश चन्द्र, संयुक्त निदेशक (राजभाषा)

MINISTRY OF FINANCE

(Department of Revenue)

(HINDI SECTION-2)

New Delhi, the 27th June, 2017

S.O. 1505.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies Central Excise Divisional Office, Ambala City under the Department of Revenue, where more than 80% staff have acquired the working knowledge of Hindi.

[F. No. E-11017/2/2017- Hindi-II (DOR-DOR)]

Dr. SATISH CHANDRA, Jt. Director (O.L.)

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 21 जून, 2017

का.आ. 1506.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स एसजीएस इंडिया प्राइवेट लिमिटेड, प्लॉट सं. 64, जीआईडीसी मेन रोड, धरमपुर, पोरबंदर-360577, गुजरात, को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय की अधिसूचना सं.का.आ. 3975, तारीख 20 दिसम्बर, 1965 और का.आ. 3978, तारीख 20 दिसम्बर, 1965 की

अनुसूची में विनिर्दिष्ट खनिज और अयस्क समूह-I, अर्थात् लौह अयस्क, बॉक्साइट तथा खनिज और अयस्क समूह-II, अर्थात् जिंक कन्स्ट्रैट के निर्यात से पूर्व निम्नलिखित शर्तों के अधीन पोरवंदर, पिपाभव, बेदी, ओखा, कांडला तथा मुन्द्रा पत्तनों पर उक्त खनिजों और अयस्कों का निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात्:-

- (i) यह अभिकरण, क्रमशः खनिज और अयस्क समूह-I का निर्यात (निरीक्षण) नियम, 1965 तथा खनिज और अयस्क समूह-II का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और
- (ii) यह अभिकरण, इस अधिसूचना के अधीन अपने कार्यों के पालन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर लिखित रूप में दिए गए ऐसे निर्देशों से आबद्ध होगी।

[फा.सं. के.-डी.ओ.सी.-16/14(10)/2017 - निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 21st June, 2017

S.O. 1506.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s SGS India Private Limited, Plot No. 64, GIDC Main Road, Dharampur, Porbandar – 360577, Gujarat, as an agency (hereinafter referred to as the said agency), for a period of three years from the date of publication of this notification, for the inspection of Minerals and Ores- Group-I, namely, Iron Ore, Bauxite and Minerals and Ores-Group-II, namely, Zinc Concentrates, specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce *vide* number S.O. 3975, dated the 20th December, 1965 and S.O. 3978, dated the 20th December, 1965 respectively, prior to export of the said Minerals and Ores at Porbandar, Pipavav, Bedi, Okha, Kandla and Mundra Ports subject to the following conditions, namely: -

- (i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the procedure of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965 and the Export of Minerals and Ores - Group II (Inspection) Rules, 1965, respectively; and
- (ii) the said agency in performance of its function under this notification shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council may give, in writing, from time to time.

[F.No. K-DoC-16/14(10)/2017- Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.

कोयला मंत्रालय

नई दिल्ली, 15 जून, 2017

का.आ. 1507.—केन्द्रीय सरकार, एतद्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (1987 में यथासंशोधित) के नियम 10 के उप-नियम (4) के अनुसरण में, कोयला मंत्रालय के अधीनस्थ सार्वजनिक क्षेत्र उपक्रम सार्वजनिक कोलफील्ड्स लिमिटेड के दीपक स्थित क्षेत्रीय कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-13012/1/2017-हिंदी]

सुबोध कुमार, संयुक्त निदेशक (राजभाषा)

MINISTRY OF COAL

New Delhi, the 15th June, 2017

S.O. 1507.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976 (as amended in 1987), the Central Government hereby notifies the Area Office, Dipka, South Eastern Coalfields Limited under the control of Ministry of Coal wherein the percentage of the staff have acquired the working knowledge of Hindi has gone above 80%.

[F. No. E-13012/1/2017- Hindi]

SUBODH KUMAR, Jt. Director (O.L.)

वस्त्र मंत्रालय

नई दिल्ली, 21 जून, 2017

का.आ. 1508.—केन्द्रीय सरकार, (संघ के शासकीय प्रयोजनों के लिए प्रयोग) राजभाषा नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, वस्त्र मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालय को, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

हस्तशिल्प विपणन एवं सेवा विस्तार केंद्र,
विकास आयुक्त (हस्तशिल्प) का कार्यालय,
डॉ. राजेंद्र प्रसाद रोड, विकास भवन,
औरंगाबाद-431001 (महाराष्ट्र)

[सं. ई-11016/1/2015-हिंदी]

पुनीत अग्रवाल, संयुक्त सचिव

MINISTRY OF TEXTILES

New Delhi, the 21st June, 2017

S.O. 1508.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government, hereby notifies the following office of the Ministry of Textile, more than 80% staff whereof have acquired the working knowledge of Hindi.

Handicrafts Marketing and Service Extension Centre
O/o the Development Commissioner (Handicrafts),
Dr. Rajendra Prasad Road, Vikas Bhawan,
Aurangabad-431001 (Maharashtra)

[No. E-11016/1/2015- Hindi]

PUNEET AGARWAL, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 13 जून, 2017

का.आ. 1509.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, हिन्दुस्तान एयरोनॉटिक्स लिमिटेड, महाराष्ट्र एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/10 ऑफ 2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.06.2017 को प्राप्त हुआ था।

[सं. एल-42011/172/2012-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 13th June, 2017

S.O. 1509.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 2/10 of 2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Hindustan Aeronautics Limited, Maharashtra and their workman, which was received by the Central Government on 03.06.2017.

[No. L-42011/172/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/10 of 2013EMPLOYERS IN RELATION TO THE MANAGEMENT OF
HINDUSTAN AERONAUTICS LTD.

The General Manager
Hindustan Aeronautics Limited,
Aircraft Manufacturing Division,
Ojhar Township P.O.,
Nasik (Maharashtra) - 422207.

AND

THEIR WORKMEN

The General Secretary,
HAL (Nasik Division) Employees' Union,
HAL Township, Ojhar (MIG) P.O.,
Nasik (Maharashtra) - 422207

APPEARANCES :

FOR THE EMPLOYER : Mr. Sunil Shroff, Advocate

FOR THE WORKMEN : Mr. J.H. Sawant, Advocate

Mumbai, dated the 9th May, 2017

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No.L-42011/172/2012-IR (DU) dated 28.02.2013 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s. Hindustan Aeronautics Limited, Aircraft Manufacturing Division, Nasik in denying the promotion of Scale-11 to Smt. Sagira Vasudevan w.e.f. 01.01.2011 is justified and proper ? If not, what relief and other benefits the employee is entitled to ?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party workman filed her statement of claim at Ex-5.

3. It appears that second party workman has joined the Hindustan Aeronautics Ltd. Nashik Division on 21.1.1982 and has been working since last 31 years. She is holding SSC with Nursing qualification. She was working as Staff Nurse in Scale 10 Grade since 1.1.2006. She was promoted w.e.f. 1.1.2012 as per time scale promotion evolved in terms of Memorandum of Settlement and on meting the eligibility criteria including performance appraisal reports required for promotion. However, she was not promoted to scale 11 w.e.f. 1.11.2011.

4. According to the second party workman, she was lastly promoted to the post of Chief Supervisor [Nursing] in scale 10 w.e.f. 1.1.2006 and she was entitled to be promoted to the post of Senior Chief Supervisor [Nursing] in special scale equivalent to Grade-I in the pay scale of Rs.12,600-32,600 w.e.f. 1.1.2011 on account of her uninterrupted and

satisfactory service span in the scale of 10 for the period of 5 years as per clause 2.2.2 of the first party's circular No. HAL/P & A/27 (30)/08 dated 10.10.2008 on the subject of "Review of Time Scale Promotion and Career Plan Scheme in respect of workman" to be read with the Memorandum of Settlement dated 6.4.2004 regarding review of the Modified Time Scale Promotion and Career Plan Scheme. The first party granted promotion on the basis of said promotion policy to other employees w.e.f. 1.1.2011 who were junior to her in the service. The second party workman therefore requested the first party by letter dated 7.2.2011. She also sent another letter dated 31.3.2011. The first party by letter dated 7.4.2011 informed the second party that the second party was not considered for promotion from the post of Chief Supervisor [Nursing] in scale 10 to the post of Senior Chief Supervisor [Nursing] in special scale equivalent to Grade-I as she was not meting the eligibility criteria of average performance index of 45% for preceding 3 years. According to the second party reasons so assigned by the first party for denying her promotion to the post of Senior Chief Supervisor [Nursing] in special scale is untenable and illegal.

5. It is a case of second party workman that she was never informed about the entries made in her annual performance appraisal report in the form of marks against the traits which are treated and considered as Annual Confidential Reports and on the basis of which the average performance index was drawn by the first party. Even entries in the form of giving marks against the traits in the said report have made been arbitrarily, casually, without application of mind and in violation of all norms and guidelines laid down for writing annual confidential reports as incorporated in the first party's Personnel Circular No. 506 dated 17.2.1984 and other circulars on the said subject matter. The guidelines for writing annual confidential reports have not been followed by the officers and Sectional Head and Head of Department who have been stated to have assessed the performance of the concerned workman and gave the marks as against the traits as classified in the Performance Appraisal Report. Method of assessing suitability has been revised in place of annual confidential reports. Neither initiating authority as well as sectional head and head of department who have signed on Performance Appraisal Report have paid adequate attention and care in preparing the reports. There is ambiguity, vagueness and carelessness in giving the marks and scaling the gradation as average in the performance appraisal report. Performance appraisal reports have been made in casual manner without considering material on record. As such performance appraisal reports are bad in law.

6. It is also a case of second party workman that the second party workman was never informed of any deficiencies in her services or was never communicated her rating satisfactory or otherwise by the first party management as contemplated under circular dated 9.7.2003. She was never given opportunity to explain her conduct and performance. The officers who have assessed her performance and have given marks as against the traits did not apply the mind at all. The second party workman is therefore asking to declare that the action of the first party management in denying the second party workman the promotion from the post of Chief Supervisor [Nursing] in scale 10 to the post of Senior Chief Supervisor [Nursing] in special scale equivalent to Grade-I in the pay scale of Rs.12,600-32,600 w.e.f. 1.1.2011 is illegal and improper and she is entitled to be promoted to the post of Senior Chief Supervisor [Nursing] in special scale w.e.f. 1.1.2011 with all consequential benefits.

7. First party management resisted the claim by filing the written statement (Ex.9). It is the contention of the first party management that the service conditions of the workman of the company are governed by Certified Standing Orders and in addition to that by various circulars issued by the management from time to time. In respect of terms & conditions of employment, performance appraisals, promotions etc. of its workmen and by way of amicable settlement by all recognized unions functioning in its various divisions all over India are binding on the workmen of the company and their unions. Time scale promotion and Career Promotion Schemes are one of the service conditions of its workman protecting their rights and benefits. Memorandum of Understanding dated 30.11.2003 was recorded by and between the management of the first party and all recognized unions functioning in the company in regards to review of Time scale promotion and Career Promotion Plans Scheme. As a result of said Memorandum of Understanding circular dated 9.2.2004 enumerating modifications affected in both the Schemes was issued. As per the promotion policy circular dated 9.2.2004, promotion to the staff are affected by paper selection for which Performance Appraisal Report for the preceding 3 years and average attendance for 2 preceding years is considered. Qualifying marks for promotions are 45 out of 100 with 70% weightage for Performance Appraisal Report and 30% weightage for evaluation by promotion committee. Appraisal of each workman is done by initiating authority and the reviewing authority of the appraise and thereafter it is endorsed by the Sectional Head and thereafter certified by the Head of Department.

8. According to the first party management, the concerned workman was not meting the eligibility criteria for promotion in terms of Performance Appraisal Report. As her Performance Appraisal Report gradation for the year 2007-08, 2008-09 were average, she was not promoted w.e.f. 1.1.2011. However, she was promoted to Scale-11 w.e.f. 1.1.12 on meting the eligibility criteria required for promotion and therefore she is not entitled for reliefs as claimed. It is thus denied by the first party management that the second party workman was entitled for promotion to the post of Senior Chief Supervisor [Nursing] in special scale w.e.f. 1.1.2011 and the action of denying the promotion on 1.1.2011 is unfair and unjustified. First party management has thus sought rejection of the reference.

9. Following issues were framed at Ex.12. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the action of the management of M/s. HAL, Nashik denying the promotion of scale-11 to Smt. Sagira Vasudevan w.e.f. 01.01.2011 is proper and justified ?	No
2.	If not, what relief the concerned workman is entitled to ?	As per final order
3.	What order ?	As per final order

REASONS

Issue No.1:-

10. As a matter of fact, it appears that the Memorandum of Understanding dated 30.11.2003 was recorded by and between the management of the first party and all recognized unions in regards to review of modified Time scale promotion and Career Promotion Scheme. In terms of the said Memorandum of Understanding the company decided to notify the modifications of the then TSP and CPP in its promotion policy. Accordingly the circular dated 9.2.2004 enumerating modification was issued and it was brought to the notice of workman and the staff. By the said circular dated 9.2.2004 it was brought to the notice of all that all raised demands by the recognized union regarding modification of TSP and CPP are settled in full and final.

11. Even it is admitted by the concerned workman in her cross examination that there are Certified Standing Orders of the first party management and service conditions of the staff and workers are governed by the standing orders, various circulars issued by the management and various settlements signed between management and union. She has pleaded ignorance as regards to Memorandum of Understanding dated 30.11.2003 but then it is admitted by the concerned workman in her cross examination that the management has issued circular in respect of modification in TSP and CPP on 9.2.2004 and promotion policy is followed for promotions of the staff as per the said circular dated 9.2.2004. Admittedly as per that policy Performance Appraisal Report for the preceding 3 years are to be considered while giving promotion. 45% of the marks are necessary out of 100 for the promotion. Performance Appraisal Report has 70% weightage and evaluation by promotion committee has 30% weightage for promotion. It is admitted that there is four tier system for appraisal of performance of workman namely initiating authority then reviewing authority, endorsed by section head and certified by head of department. All these 4 authorities have to take independent decisions and promotion is given after the criteria of average performance index is met. Admittedly the time scale promotion from scale 10 to 11 is 5 years. In view of this admitted position it will have to be seen whether the service conditions of the concerned workman are fairly followed or not.

12. We have document at Sr. No.7 below Ex.11 (Ex.19) to show that the concerned workman was given marks against various traits as under.

Sl. No.	Traits	Max. Marks	Initiating Authority (IA)	Reviewing Authority (RA)
1.	Achievement of Tasks assigned	30	13	13
2.	Attendance & Punctuality	25	13	13
3.	Quality & Reliability	10	5	05
4.	Conduct & Discipline	10	4	04
5.	House Keeping	10	4	04
6.	Job Knowledge	10	4	04
7.	Any outstanding work done during the period (Suggestions/Innovations/ Initiative etc.)	5	--	--
	Total	100	43	43/100

13. The concerned workman was awarded average performance rating considering total marks in between 49 – 40 given by initiating authority and reviewing authority. Further Section Head has not found any strength in her as regards general assessment and as regards area requiring improvements. It is found that she need more efforts in Nursing care. This was the assessment of these 4 authorities and in view of that her performance was assessed as average performance. Immediate qualifying marks to become eligible for promotion is 45% in API and committee valuation. It is made clear that for assessing performance, evaluation committee will consider the factors such as job knowledge, skill possessed efficiency, discipline, achievements, specialized, exposed etc. It is thus clear that the committee has assessed the performance of the concerned workman as average considering her marks which were in between 49 – 40. It shows that the concerned workman was not meting the eligibility criteria of API of 45% for preceding 3 years and therefore she was not considered for promotion.

14. Learned Counsel for the concerned workman submitted that the first party management was never informed about the entries made in her APAR in the form of marks against the traits which are treated and considered as ACR on the basis of which average performance index was drawn by the first party management and as such entries in the form of giving marks against the traits in the said report have been made arbitrarily without any application of mind. In this respect there is no acceptable evidence on record to show that the entries in the form of giving marks against the traits in the said report have been made arbitrarily without any application of mind.

15. Even assuming for the sake of arguments that the rating or performance of the concerned workman which is rated as average is not communicated to her then that will not prove that the entries made in performance report have been made arbitrarily and without application of mind. There are 4 authorities for considering the performance namely, initiating authority then reviewing authority, endorsed by section head and certified by head of department. Each authority shall apply their mind independently while evaluating the performance of the workman. In case Head of department is in agreement with the performance evaluated by the initiating authority and reviewing authority, he is not required to put specific remark. So it cannot be said that all these authorities were biased against the concerned workman. No such evidence has come on record to show that all these authorities had any reason to make less assessment or to give less marks to the concerned workman while assessing her performance.

16. Learned Counsel for the concerned workman submitted that in the present case no opportunity was given to the second party workman before denying her promotion and denying such promotion without giving any opportunity is alike punishment for misconduct which cannot be imposed without following the procedure laid down in clause 29 of the Certified Standing Orders and also without following the principles of natural justice.

17. It is no doubt true that the adverse remarks if any made in the C.Rs in regard to the remedial defects in the conduct and work of the employee are to be communicated to them in writing confidentially by reporting officer. In this respect we like to refer documents at Sr. No.5 on the list of documents at Sr. No.27. These are the letters issued by the first party management informing the other employees about the feedback of APAR in the year 2013. It has also been communicated to the concerned workman by the letter dated 7.4.2011 that she was not considered for promotion from Scale 10 to special scale w.e.f. 1.1.2011 as she was not meting the eligibility criteria of average performance index of 45% for preceding 3 years.

18. Learned Counsel for the concerned workman submitted that the if the rating of the concerned was below average then it was incumbent upon the management to communicate that assessment of her work to the concerned workman. Since that was not done then it can be said that no opportunity was given to the concerned workman to submit the representation against the said remark / entries in respect of the marks given. In the context he seeks to rely on the decision in case of Dev Dutt V/S. Union of India & Ors. AIR 2008 (SC 2513) wherein the Hon'ble Supreme Court has concluded that every entry in ACR of the public servant must be communicated to him within the reasonable period whether it is poor, fair, average, good or very good. The Hon'ble Apex Court has observed in para 17 & 18 of the judgment that,

“In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) that arbitrariness violates Article 14 of the Constitution.

Thus it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very food) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.”

19. Learned Counsel for the concerned workman has also relied on the decision in case of Sukhdev Singh V/S. Union of India in Civil Appeal No. 5892/2006 wherein the Hon'ble Apex Court while referring to the decision in case of Dev Dutt V/S. Union of India & Ors. has concluded that every entry in ACR of public servant must be communicated to him / her within the reasonable period. The Hon'ble Apex Court thus observed that even in cases there is no bench mark laid down by the authorities for promotion, non-communication of entries in the ACR of the public servant is arbitrary because it deprive the concerned employee on making representation against it and praying for its upgradation. Every entry in the ACR of every employee under the State whether he is civil, judicial, police or other service (except Military) must be communicated to him so as to enable him to make the representation against it because non communication deprive the employee of the opportunity of making representation against it which may affect his chance of being promoted. Hence the non-communication is arbitrary and violative of article 14 of the Constitution.

20. In view of this legal position it was necessary for the first party management to communicate the average performance of the second party workman to her before denying the promotion. As a matter of fact, it appears that the first party management has informed to the concerned workman on 7.4.2011 in reply to her reference letter dated 7.2.2011 that she was not considered for promotion from S-10 to special scale w.e.f. 1.1.2011 as she was not meting the eligibility criteria of average performance index of 45% for preceding 3 years. But then admittedly her average performance was not communicated to her before denying promotion as is done in case of other employees. It appears from the record that feedback of APAR was communicated to the other employees identifying the areas where the improvement is required. In view of this legal position, entries in ACR though the entries are not bench mark for promotion are to be communicated to the concerned employee before denying promotion. In view of that it will have to be said that before denying promotion to the concerned employee, she was not given the opportunity to make representation in respect of assessment of her work and only in view of that action of denying promotion to her is illegal.

21. So far present case is concerned, concerned employee is given promotion on 1.1.2012. In view of that it will be open for her to make representation to first party authorities for retrospective promotion in view of legal position cited supra. If such representation is made by the concerned workman, the same shall be considered by the first party management appropriately in accordance with law. If the upgradation is allowed from 1.1.2011, the first party management should consider forthwith for her promotion as Senior Chief Supervisor [Nursing] from 1.1.2011 retrospectively and if she is promoted from 1.1.2011 she will get the benefit of balance of arrears of pay along with 8% per annum interest and other consequential benefits. Issue No.1 is therefore answered accordingly as indicated against it.

Issue No. 2 & 3

22. In view of my findings to Issue No.1, I find that the workman is entitled to relief to some extent as per final order. Thus the order.

ORDER

- (1) It is declared that action of first party management in denying second party workman the promotion from the post of Chief Supervisor [Nursing] in scale 10 the post of Senior Chief Supervisor [Nursing] in special scale w.e.f. 1.1.2011 is unjustified and improper.
- (2) It is open to the concerned workman to make the representation to the concerned authorities for retrospective promotion and if such representation is made by her the same shall be considered by the concerned authorities appropriately in accordance with law.
- (3) If the representation is allowed the concerned workman should be considered forthwith for promotion retrospectively w.e.f. 1.1.2011 and if she is promoted, she will get the balance of arrears of pay along with 8% per annum interest and other consequential benefits from 1.1.2011.

Date: 09/05/2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 13 जून, 2017

का.आ. 1510.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सचिव, कोइर बोर्ड, कोचीन व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 10/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 13th June, 2017

S.O. 1510.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (LC No. 10/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in Annexure, in the industrial dispute between the employers in relation to the Secretary, Coir Board, Cochin & others and their workman, which was received by the Central Government on 04.01.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 15th day of November, 2016

INDUSTRIAL DISPUTE No. LCID. 10/2008

Between :

K Yoseph,
S/o Surayya, Ex-cook,
D No 114, Cottonpet, New colony,
Davaleswaram,
Rajahmundry, East Godavari District

...Petitioner

AND

1. The Secretary,
Coir Board, Cochin, Kerala State
2. Regional Coir Development Officer
RCT & DC, Rajahmundry, E G District

...Respondent(s)

Appearances :

- | | | |
|----------------------|---|---|
| For the Petitioner | : | A K Jayaprakash Rao & M Govind, Advocates |
| For the Respondent 1 | : | S Raja Shekar Rao, Advocate |
| For the Respondent 2 | : | No representation |

AWARD

This is a petition filed under section 2(A)(2) of Industrial Disputes Act 1947 with a prayer to pass an award against the Respondents by setting aside the order dated 18.03.2003 terminating the petitioner/workman with effect from 28.1.2003 as illegal, arbitrary and unconstitutional and consequently direct the management to reinstate the workman with back wages and continuity of service with attendant benefits. The case is registered and numbered as LCID. No. 10/2008 and notices were issued to the parties concerned.

2. The Respondent has filed a detailed counter on 20.6.2011 denying the allegations made by the petitioner. The case is posted to 14.9.2011 for petitioner's evidence. At the request of the petitioner's counsel the case is adjourned to 29.12.2011 and 13.3.2012.

3. Since 13.3.2012, there is no representation on behalf of the petitioner nor he adduced any evidence on his behalf to prove his case. It is not wise to defer the matter to any other date. None appearance of the parties clearly indicates that perhaps the matter has been settled between the parties and there is no dispute exists between the parties. it is felt that the Petitioner is not interested in pursuing the dispute. In the circumstances stated above 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri J Vijaya Sarathi, Secretary to the Court, corrected by me on this the 15th day of November, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 13 जून, 2017

का.आ. 1511.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वरिष्ठ महाप्रबंधक, आयुध कारखाना व अन्य, कानपुर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 03/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.05.2017 को प्राप्त हुआ था।

[सं. एल-14012/34/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 13th June, 2017

S.O. 1511.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID No. 03/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in Annexure, in the industrial dispute between the employers in relation to the Senior General Manager, Ordnance Factory & others, Kanpur and their workman, which was received by the Central Government on 16.05.2017.

[No. L-14012/34/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Present : Sri Shubhendra Kumar, HJS,

Industrial Dispute No. 03 of 2014

Between :

Sri Neeraj Kumar S/o Shri Shiv Charan
Resident of 232 E Bargadiyapurwa,
Panki, Kanpur, U.P.

And

1. Senior General Manager,
Ordnance Factory,
Kalpi Road,
Kanpur.
2. Sri Bhupender Singh,
Son of Awadesh Singh,
Resident of EWS 2508,
Awas Vikas Kalyanpur,
Kanpur.

AWARD

1. Central Government, Mol & Employment, New Delhi, vide notification no. L-14012/34/2013-IR (DU) dated 22.01.2014, has referred the following dispute to this tribunal.
2. Whether the action of the management of Sri Bhupender Singh, Kanpur, in terminating the services of Sri Neeraj Kumar son of Sri Shiv Charan workman with effect from 09.04.2013 is just fair and legal? If not, to what relief the workman concerned is entitled to?
3. The concerned workman in the present case after filing of his claim statement moved an affidavit 11.11.2014, on 07.01.15, stating therein that he is not interested to continue with the case and without any pressure he wants to withdraw his claim.
4. In view of above, the tribunal has no option but to allow the request of the workman and the reference is decided as not pressed against the workman.
5. Accordingly it is held that the workman is not entitled for any relief pursuant to the present reference order.
6. Reference is decided accordingly against the workman.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 13 जून, 2017

का.आ. 1512.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स महाप्रबंधक, हिन्दुस्तान एयरोनॉटिक्स लिमिटेड, चाकरारी, कानपुर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 12/2011, 13/2011, 14/2011, 15/2011, 16/2011, 17/2011,) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.05.2017 को प्राप्त हुआ था।

[सं. एल-14012/10/2010-आईआर (डीयू),
सं. एल-14012/15/2010-आईआर (डीयू),
सं. एल-14012/14/2010-आईआर (डीयू),
सं. एल-14012/11/2010-आईआर (डीयू),
सं. एल-14012/12/2010-आईआर (डीयू),
सं. एल-14012/13/2010-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 13th June, 2017

S.O. 1512.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Nos. 12/2011, 13/2011, 14/2011, 15/2011, 16/2011, 17/2011,) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, M/s. Hindustan Aeronautics Limited, Chakeri, Kanpur and their workman, which was received by the Central Government on 17.05.2017.

[No. L-14012/10/2010-IR (DU),
No. L-14012/15/2010-IR (DU),
No. L-14012/14/2010-IR (DU),
No. L-14012/11/2010-IR (DU),
No. L-14012/12/2010-IR (DU),
No. L-14012/13/2010-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR**

Present : Sri Shubhendra Kumar, HJS,

Industrial Dispute No. 12 of 2011

Shri Ram Prakash maurya ,
S/o. Late Ram Swarup Mauraya,
184, Ahirwan,
Harjendra Nagar,
Kanpur

Versus

The General Manager
M/s. Hindustan Aeronautics Limited,
T.A.D. , Chakeri,
Kanpur.

And**Industrial Dispute No. 13 of 2011**

Shri Dinesh Kumar Dixit.
S/o. Shri Ram kishore Dixit,
208-A, Safipur IInd.
Opposite H.A.L. Township Gate,
Harjendra Nagar, Kanpur-7.

Versus

The General Manager
M/s. Hindustan Aeronautics Limited,
T.A.D. , Chakeri,
Kanpur

And**Industrial Dispute No. 14 of 2011**

Shri Lalta Prasad Prajapati,
S/o. Kudnoo Ram,
C/o. Shri Ram Prakash Maurya,
184, Ahirwan, Harjendra Nagar,
Kanpur.

Versus

The General Manager
M/s. Hindustan Aeronautics Limited,
T.A.D. , Chakeri,
Kanpur.

And**Industrial Dispute No. 15 of 2011**

Shri Ram Prakash Chaurasia,
S/o. Late Ram Bharose Chaurasia,
223 Ghaukhera,
Post Chakeri Aerodrme,
Kanpur – 208008.

Versus

The General Manager
M/s. Hindustan Aeronautics Limited,

T.A.D. , Chakeri,
Kanpur.

And

Industrial Dispute No. 16 of 2011

Mahendra kumar,
S/o. Late Akalu,
16, Savitri Nagar,
Harjendra Nagar,
Kanpur.

Versus

The General Manager
M/s. Hindustan Aeronautics Limited,
T.A.D. , Chakeri,
Kanpur.

And

Industrial Dispute No. 17 of 2011

Shri Rakesh kumar,
S/o. Ram Chandra,
500, Durga Vihar, Tar Bangalia,
Jajmau,
Kanpur-10.

Versus

The General Manager
M/s. Hindustan Aeronautics Limited,
T.A.D. , Chakeri,
Kanpur.

AWARD

1. Central Government, Mol, New Delhi, vide notification no L/14012/10-15/2010-IR(D.U.) dated- 28/3/2011 has referred the following dispute for adjudication to this tribunal. Separately in each industrial dispute referred above.
2. In I.D. NO. 12/2011 the schedule of reference is ‘Whether the action of the management of Hindustan Aeronautics Limited, Kanpur in terminating the services of Shri Ram Prakash S/o Shri Ram Swaroop w.e.f. 02/01/1989 is legal and justified? What relief the workman is entitled to?’
3. In I.D. NO. 13/2011 the schedule of reference is ‘Whether the action of the management of Hindustan Aeronautics Limited, Kanpur in terminating the services of Shri Dinesh kumar S/o Shri Ram Kishore w.e.f. 02/01/1989 is legal and justified? What relief the workman is entitled to?’
4. In I.D. NO. 14/2011 the schedule of reference is ‘Whether the action of the management of Hindustan Aeronautics Limited, Kanpur in terminating the services of Shri Lalita Prasad Prajapati S/o Shri Kadam Ram w.e.f. 02/01/1989 is legal and justified? What relief the workman is entitled to?’
5. In I.D. NO. 15/2011 the schedule of reference is ‘Whether the action of the management of Hindustan Aeronautics Limited, Kanpur in terminating the services of Shri Ram Prakash chaurasia S/o late Ram Bharose Chaurasia w.e.f. 02/01/1989 is legal and justified? What relief the workman is entitled to?’
6. In I.D. NO. 16/2011 the schedule of reference is ‘Whether the action of the management of Hindustan Aeronautics Limited, Kanpur in terminating the services of Shri Mahendra kumar S/o late Akalu w.e.f. 02/01/1989 is legal and justified? What relief the workman is entitled to?’
7. In I.D. NO. 17/2011 the schedule of reference is ‘Whether the action of the management of Hindustan Aeronautics Limited, Kanpur in terminating the services of Shri Rakesh Kumar S/o Shri Ram Chandra w.e.f. 02/01/1989 is legal and justified? What relief the workman is entitled to?’
8. Authorized representative of worker has moved the application for consolidating the above six industrial dispute as facts and laws involved in it is identical which was not opposed by authorized representative of management.

Considering the fact the application was allowed by my learned predecessor vide order dated 14/3/2013. All the cases were consolidated and I.D. 12/2011 was made leading case.

9. Common facts of worker in all the cases is that the workers were appointed by management in group A post with effect from Dec. 1979 on work of permanent nature. They continued to work without any break in service up to 31/12/1988. Their services were terminated with effect from 02/01/1989 since 01/01/1989 was Sunday. The workers continuously worked without any break for over 9 years and before terminating services of workers no statutory notice was given nor any retrenchment compensation was paid in the violation of section 25(F) of I.D. act. It is requested that termination of services of workers with effect from 02/01/1989 be declared unjustified and illegal and workers be reinstated in service with continuity, full back wages and other consequential benefits.

10. In the written statement /reply the claim of workers was refuted by management and it is alleged that in the reference designation/post of workers is not mentioned and order of reference send by Government Of India is highly belated as cause of action as mentioned in the matter of dispute is of year 1989 and reference order has been issued after 21years in 2011. It is further alleged that management has no power to appoint any person suo moto but appointment has to be made according to rules and procedures of public sector undertaking. Management in the past occasionally needed purely temporary hands for short duration and had engaged some persons on causal / daily rate basis. Since matter is 21 years old no record of alleged employment is traceable. Workers at no point of time ever appointed on group A post. It is also denied that workers worked up to 31/12/1988.

11. Worker has filled rejoinder asserting the same facts as alleged in claim statement. It is also alleged that after termination of service of workers industrial dispute was referred by state government to labor court 1 U.P. During pendency of its apex court has held that in relation to the management company appropriate government is central government and as such the reference made by state government is without jurisdiction. There after these reference was made by central government.

12. On behalf of workers Ram Prakash maurya examined himself as WW1 and on behalf of management Shri Chandra Prakash mishra chief manager has been examined as MW1.

13. On behalf of workers 9 documents were filed through list 9/1 which are copy of gate pass of workers paper no 9/2-9/7 and copy of application of management filed in at adjudication case no 283/2000 paper no 9/8-9/11. On behalf of management 2 papers were filed through list 13/1 which is photocopies of circular of PESB and recruitment and promotion rules.

14. I have heard parties representative and perused the record and evidence adduced by parties.

15. MW1 Shri Chandra Prakash Mishra is his evidence on affidavit has stated that in HAL that HAL being a GOI undertaking vacancies are filled through proper channel after advertising the post and receiving the names of candidate from employment exchange. Thereafter written and oral test are held and no appointment has done without following above procedure. He further stated that workers were never appointed by HAL nor they have filed any documentary evidence to prove that how they receive payment. He further stated that recruitment and promotion rules are applicable for permanent employees and not for daily wagers.

16. Worker Ram Prakash WW1 has stated in his evidence on oath that all the workers were recruited by HAL in DEC. 1979 and they continuously worked upto 31/12/1988. Workers have not filed any appointment letter to show that they were appointed in group A nor they have alleged that they ever received any appointment letter. In his cross examination he admitted that he did not receive any appointment letter. He also deposed that they did not appear in any examination or interview as required for filling up permanent vacancies. It is also admitted by him that he was not permanent but he was working as casual labor and has filed the gate pass of workers which are paper no. 9/2-9/7 where in also designation of casual worker is written. He further admitted that he has not filed any documentary evidence to show that from DEC 1979 to DEC 1989 for how many days they worked and receive payment.

17. From evidence of worker it is clearly prove that worker have never been appointed by HAL as alleged by workers in their claim statement and as per own admission WW1 Ram Prakash workers were working as casual labor.

18. Now it is duty of workers to prove that workers have worked continuously for 240 days preceding termination. But workers have not filed any evidence to prove that for how many days they work and received payment.

19. Workers have only filed copies of gate pass which cannot be reliable evidence to prove that worker have worked for 240 days continuously before termination. Because in Gate pass entries of few months only shown.

20. Workers should have filed payment vouchers and in absence of these vouchers workers had opportunity to summon documents regarding their attendance and voucher register from management but workers neither filed these relevant documents nor summoned these documents from management. As such they failed to prove that they worked

continuously for more than 240 days before date of termination. Workers also could not prove that they were appointed by HAL and worked continuously from 1979 to 1988.

21. In view of above discussion workers failed to prove their case and as such workers are not entitled for any relief. Award is passed accordingly.

22. Let the copies of award be placed in connected Industrial dispute no. 13,14,15,16,17 of 2011

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 13 जून, 2017

का.आ. 1513.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य अभियंता, एमईएस, व अन्य, पुणे एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/25 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.05.2017 को प्राप्त हुआ था।

[सं. एल-14011/17/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 13th June, 2017

S.O. 1513.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 2/25 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Chief Engineer, M.E.S., and others, Pune and their workman, which was received by the Central Government on 31.05.2017.

[No. L-14011/17/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/25 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

M.E.S. PUNE & CWE KHADKI

1. The Chief Engineer
M.E.S. Pune Zone
Camp, Pune 411 001.
2. The Commander Works Engineer
CWE Khadki
Pune 411 003.

AND

THEIR WORKMEN

The General Secretary
MES Employees' Union
595, Narayan Peth
Pune 411 030.

APPEARANCES:

FOR THE EMPLOYERS : Maj Madhu Kumar, Representative

FOR THE UNION : Mr. Suyog Wagh, Advocate

Mumbai, dated the 8th May, 2017.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-14011/17/2013-IR (DU), dated 28.02.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the MES Employees Union i.e. No.1 Not holding of DPC for industrial staff for long time (2) failure to implement restructuring of artizen staff (3) not conducting of trade test (4) not holding of DPC for peon, safaiwala and chowkidar (5) not granting of 1st and 2nd ACP for the staff and No.(6) not preparing of seniority list is justified? Of not, to what relief the union is entitled to ?”

2. After receipt of the Reference, notices were issued to both the parties. Second party Union filed their Statement of Claim vide Ex-8. First party resisted the Statement of claim of Union by filing their Written Statement (Ex-9). My Ld. Predecessor framed issues at Ex-11. Thereafter matter was fixed for recording evidence by Union.

3. Today Second party/ union filed application by way of Affidavit (Ex-25) stating that the issues before this Tribunal are being satisfactorily completed by the Management and no issue is pending with the first party management. Therefore second party union prayed to dispose of the matter. Orders were passed on Ex-25. Accordingly I pass the following order:

ORDER

Reference is disposed of as withdrawn.

Date: 08.05.2017

M. V. DESHPANDE, Presiding Officer/Judge

नई दिल्ली, 13 जून, 2017

का.आ. 1514.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, डालनाम के लिए राष्ट्रीय अनुसंधान केंद्र और अन्य सोलापुर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/47 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.05.2017 को प्राप्त हुआ था।

[सं. एल-42012/46/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 13th June, 2017

S.O. 1514.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 2/47 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Research Centre for Pomegranate and others, Solapur and their workman, which was received by the Central Government on 31.05.2017.

[No. L-42012/46/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/47 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE

The Director

National Research Centre for Pomegranate

Near Solapur University

Solapur (MS).

(2) M/s. SWADESHI SECURITIES

M/s. Swadeshi Securities
 96, Salgar Vasti
 Dongaon Road
 Solapur (MS).

AND**THEIR WORKMAN**

Smt. Bebi Haridas Survase
 A/P Kondi
 Tal. North Solapur
 Solapur, Maharashtra-413 001.

APPEARANCES:

FOR THE EMPLOYER NO.1 : Mr. S.P. Chinchwadkar, Advocate.
 FOR THE EMPLOYER NO.2 : No appearance.
 FOR THE WORKMAN : Mr. V.R. Deshpande, Advocate

Mumbai, dated the 10th March, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/46/2014-IR (DU), dated 22.07.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the workman Smt. Bebi Haridas Survase for asking regularization as an employee of National Research Centre for Pomegranate, Solapur is legal and justified? If yes to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party Workman filed an application (Ex-8) for interim relief and thereafter filed Statement of Claim at Ex-9. First party Management resisted the Statement of claim by filing their Written Statement at Ex-10 and their Say (Ex-11) on IR application. Matter was fixed for filing Written Statement by Management No.2.

3. Today, Advocate for the first party/ management filed application to take the matter on today's board. Second party Workman remained present along with her Advocate. Second party/ Workman filed application in the form of affidavit (Ex-13) requesting to dispose of the Reference as she is not interested in pursuing the matter further. Orders were passed on Ex-13. As the Second Party workman does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 10.03.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 13 जून, 2017

का.आ. 1515.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप निदेशक, नवोदय विद्यालय समिति, लखनऊ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 03/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.05.2017 को प्राप्त हुआ था।

[सं. एल-40012/77/2006-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 13th June, 2017

S.O. 1515.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 03/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the employers in relation to the Dy. Director, Navodaya Vidyalaya Samiti, Lucknow and their workman, which was received by the Central Government on 23.05.2017.

[No. L-40012/77/2006-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 03/2007

Ref.No. L-42012/77/2006-IR(DU) dated 12.01.2007

BETWEEN :

Sri Vineet Kumar
S/o Late Sri Chheda Lal,
R/o Sahlehpur Purwa, Post-Ugloo
Unnao (U.P)

AND

1. The Dy. Director
Navodaya Vidyalaya Samiti,
Regional Office, B-10, Sector C,
Aliganj
Lucknow

AWARD

1 By order No. L-42012/77/2006-IR(DU) dated 12.01.2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Vineet Kumar S/o Late Sri Chheda Lal, Unnao and the Dy. Director, Navodaya Vidyalaya Samiti, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF NAVODAYA VIDYALAYA SAMITI, LUCKNOW/PRINCIPAL, NAVODAYA VIDYALAYA, UNNAO, IN TERMINATING THE SERVICES OF THEIR WORKMAN SRI VINEET KUMAR W.E.F. 15.05.2002 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED TO?”

3. The workman has stated in brief in the claim statement W-2 that he was initially appointed as Chowkidar in opposite party school on 01.12.1997 against the clear vacancy with the monthly wages @ 525/- per month. The opposite party is registered under the Societies Registration Act., 1860 and was administratively under the control of Dy. Director, Navodaya Vidyalaya, Lucknow. The petitioner has asserted that his work and conduct has always been satisfactory and upto the satisfaction of his superiors. His appointment was extended from time and it lasted for 4 and half years but suddenly his services were orally terminated on 15.05.2002 by the Principal of the School without assigning any reason and at the time of termination of service he was paid wages Rs.1000/- per month. The workman demanded the copy of the termination notice or order from the Principal of the School, but he was informed that no written order has been issued.

4. The petitioner has further alleged that no notice or wages in lieu of notice period or retrenchment compensation was paid. The impugned order is illegal and violative of the provisions contained in Section 25-F of the I.D. Act. He has also moved representation on 11.02.2003 but no attention was paid to it. With the aforesaid pleadings the petitioner has prayed for his reinstatement in service with full back wages. An affidavit has been filed in support of the claim statement and certain documents as per list W-3 have also been filed.

5. The management has filed written statement M-9 wherein allegations leveled in the claim statement have been denied. The opposite party has submitted that provisions of CAT Act. 1985 applies in the present case and the opposite party is not an industry and the provisions of the I.D. Act. do not apply. The opposite party has further stressed that

the petitioner has not come with clean hands, he had earlier filed OA No. 127/2003 Vineet Kumar Vs. Union of India & others before the CAT, Lucknow which was dismissed in default on 01.04.2003, restoration application moved by him was also dismissed; workman again filed an application on 17.03.2004 which was dismissed for want of prosecution. Again the workman moved recall application and the Hon'ble CAT observed that “ Application need not be recalled” and opportunity was given on the request of the counsel for the workman to raise the grievance at the appropriate forum. Thereafter the workman moved before RLC (C), Lucknow and erroneous procedure was adopted which is bad in law.

6. The opposite party has emphasized that for the purpose of good quality modern education including a strong component of culture, values, environment awareness and physical education etc. Navodaya Vidyalaya Samiti had established Vidyalayas in the name and style “Jawahar Navodaya Vidyalaya” and for effective management besides teaching staff, class –III & IV employees are also required as per necessity and work as per rules. The opposite party has admitted that due to exigency of work the petitioner was engaged as daily wages in the Mess of JNV, Unnao for specific period, as mess helper he was paid till completion of the said work, he was further engaged as daily wager Mess Helper as per requirement but at no stretch of occasions he had worked continuously for 240 days and as per directions of Hon'ble Supreme Court Section 25F of the I.D. Act. are not attracted even if the workman has completed 240 days or more.

7. The management has stressed that there being no requirement of work in Mess, his time bound engagement automatically came to an end and accordingly he was paid off and there was no violation of any provision of I.D. Act. Documents filed by the petitioner are concocted and manufactured and have been denied by the opposite party. With the aforesaid pleadings the opposite party has stated that the reference dated 12.01.2007 is bad in law. Several documents have been annexed alongwith written statement. An affidavit of Incharge Principal has been filed as A-10.

8. With the strong denial of the facts mentioned in the written statement the workman reiterated the pleas taken in the claim statement, rejoinder W-12 has been filed by the petitioner along with affidavit.

9. Application for summoning documents has been moved as W-23 with its objection M-27. Summoning documents application has been disposed off on 28.09.2012.

10. The petitioner workman has bee cross-examined on behalf of the opposite party. Other witness namely Sri Bhupender Kumar, Smt. Nisha have also been adduced in evidence by the petitioner, and have been cross-examined.

11. The management has file affidavit M-37 of Sri Rajendra Kasal, he has been cross-examined on behalf of the workman.

12. Arguments of both the parties have been heard. Record has been scanned thoroughly.

13. Heard learned authorized representatives of the parties at length and perused the records available on file.

14. The workman has come up with a case that he had initially been appointed as Chowkidar in Jawahar Navodaya Vidyalaya, Rajeevpuram, Unnao w.e.f. 01.12.1997 and was paid monthly @ Rs. 525/- per month and he worked as such, continuously, without any break, till 15.05.2002 when his services had been terminated orally by the Principal of the school without assigning any reason thereof or without giving any notice or notice pay in lieu thereof, in utter violation of provisions of Section 25 F of the Industrial Disputes Act, 1947. Further, the workman has submitted that he is a ‘workman’ as provided in the Section 2 ‘s’ of the Act and further that the Navodaya Vidhayala Samiti is an industry, under Section 2 ‘j’ of the Act, as it is not performing any sovereign function and further more that the present industrial dispute is an ‘industrial dispute’ as provided in Section 2 ‘k’ of the Industrial Disputes Act, 1947.

15. Per contra, the case of the management is that the workman, had been engaged as daily wage labourer, due to exigency of work as per necessity, for a specified period, without following the norms of the Recruitment Rules etc. The management has also submitted that the workman never completed 240 days of working; and accordingly, the provisions of Section 25 F of the Industrial Disputes Act, 1947 does not attract in the present case. Apart from this the management has also raised preliminary objection towards the maintainability of the present case on the grounds that the Navodaya Vidhayala Samiti is not an industry and secondly that the present case does not constitute an industrial dispute.

16. Having been given my thoughtful consideration to the rival contentions of the learned authorized representatives of the parties and perusal of entire documentary as well as oral evidence relied upon by the parties, it would be proper and just to dispose of the preliminary objection taken by the opposite party over the admissibility of the present case.

17. Firstly, the management has submitted that the Navodaya Vidhayala Samiti is not an ‘industry’ within the definition of ‘industry’ under Section 2 ‘j’ of the Act. In this regard, On contrary, the authorized representative of the workman has contended that ‘no profit and no loss’ basis cannot exclude the Navodaya Vidhyalay Samiti from the

purview of ‘industry’ and the same is not performing any sovereign function. He has relied on *Union of India vs Rajendra Kumar & others 2004 (103) FLR 307* and *Bangalore Water Supply* case.

Hon’ble Apex Court in Bangalore Water Supply case has observed that:

“absence of profit motive on gainful objective is irrelevant, be the venture in the public, joint, private or other sector.”

Hon’ble Apex Court has further observed that

“Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale Prasad or food) prima facie, there is an industry in that enterprise.”

In the instant case the opposite party management has come with specific pleading that that the opposite party, Navodaya Vidhyalay Samiti is a creation of Statutory Organization owned and controlled by the Ministry of Human Recourse, Government of India and the activities of the Navodaya Vidhyalay Samiti is not relating to any trade, business or manufacturing process instead are of the Government relatable to sovereign functions of the Government.

It is well known that the Jawahar Navodaya Vidhyalay is indulged in imparting education to the meritorious students who belong to economically weaker sections of the society and cannot afford to have good education. No doubt that it is not a business or profit making activity; but a welfare measure of the Government of India, being India a Welfare State. The activity in which the Navodaya Vidhyalay Samiti is indulge is very much the same as preformed by other schools across the country and hence cannot be termed as sovereign function only for the fact that it is controlled by the one of the Ministry of the Government of India. Here this is a social measure for upliftment of the society at large and is controlled by the Ministry of Human Resource. Also, it is noteworthy to indicate that the nature of work carried out by Navodaya Vidhyalay Samiti qualifies the triple test, formulated by Hon’ble Apex Court in Bangalore Water Supply case.

Thus, in view of facts and circumstances of the case and above legal prepositions, I am of the opinion that Navodaya Vidhyalay Samiti is at par with the other schools in country, which are covered under Industrial Dispute; and accordingly, come to the conclusion that the opposite party is an ‘industry’ within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947 so far as running/administration of welfare activities is concerned through Navodaya Vidhyalay Samiti.

18. Secondly, the opposite party has come up with case that there exists no ‘industrial dispute’ in the present case; whereas the workman has vehemently opposed the same.

In this regard, the Section 2 A of the Industrial Disputes Act, 1947 reads as under:

2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. – (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

In the instant case, the services of the workman had, allegedly, been terminated by the management and a bare perusal of the above quoted provision it becomes crystal clear that the present case is an industrial dispute.

19. Admittedly no appointment letter was issued to the workman and he was engaged by the management as a daily wager. The workman in his pleadings and evidence has come up with the case that he worked continuously from 01.12.1997 to 15.05.2002 and his services have been terminated w.e.f. 15.05.2002 and in order to substantiate his pleadings he has filed photocopy of attendance sheet for August, 99 and certain office orders, entrusting duty upon the workman.

In order to sustain his pleadings of continuous working w.e.f. 01.12.1997 to 15.05.2002 the workman has moved an application, W-24 for summoning documents from the management, duly supported with an affidavit; wherein the workman sought directions from this Tribunal for the management to produce the original records relating to him, including the Duty Registers of Group ‘D’ employees, Monthly Pay Voucher Sheets of the daily wages employee and Gate Entry Registers of the school for the period from 01.12.1997 to 15.05.2002. In rebuttal, the management filed its objection, M-27, duly supported with an affidavit of Rajendra Ram Chandra Kasar, Principal of Jawahar Navodaya Vidhyalay (who was later produced by the management as management witness); wherein Para 6 of the objection, it had been denied that the workman never worked for 240 days in a year and the documents summoned by the workman like Duty Register, Gate Entry Register of School and Monthly Pay Vouchers Sheets

from 01.12.1997 to 15.05.2002 by efflux of time having been rendered redundant are not traceable and cannot be produced.

This Tribunal after hearing the learned authorized representatives of the parties, passed a detailed order dated 25.09.2012, which is quoted hereunder:

"Heard parties and perused application for summoning the documents and objections thereof.

The workman by the way of his application for summoning documents has tried to summon certain documents, which are in power and possession of the opposite party, to corroborate his claim that he worked with the opposite party w.e.f. 01.12.1997 to 15.05.2002. He has relied on Director, Fisheries Terminal Division vs. Bhikubhai Meghajibhai Chavda 2010 AIR SCW 542; wherein Hon'ble Gujrat High Court has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster roll etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.

Further, the submission of the management that the documents summoned by h workman, by efflux of time have been rendered redundant are not traceable and cannot be produced seems to be irresponsible in the light of the fact that the workman had been terminated on 15.05.2002 and the matter was referred for adjudication in year 2007, therefore, the management was supposed to keep intact the documents pertaining to the workman to pursue their case.

However, in view of non-submission of the documents summoned, appropriate inference shall be drawn at appropriate stage."

20. Apart from giving his own evidence, the workman produced two other witnesses, who were former students of Jawahar Navodaya Vidhayalay, Unnao, viz. Sri Bhupendra Kumar and Ms.Nisha Devi. Sri Bhupendra Kumar in his statement, given on oath, has stated that he studied in the school from standard VI to XII. He was in class VI in the year 1999 and he saw the workman, Vineet Kumar, working in the school. He further stated that he saw the workman working in the school upto 2002. He also stated in his cross-examination that the workman used to do night duty. He never saw workman working in day. He stated that the workman used to look after the school premises at night and there was no other than the workman to take care of the school at night. The other witness, viz. Ms. Nisha Devi, stated in her cross-examination that she studied from Class VI to VIII, in year 1999 to 2002. She stated that when she used to come back from tutorial classes at 9-10 PM, she used to see the workman doing watch and ward service in the school campus. She also stated that she used to go for tutorial every day and used to see the workman each day. She also stated that apart from workman some other persons viz. Sri Amar Nath, Radhey Lal, Amit, Phoolmati, Sarvesh, Jogendera etc. also used to work in the school.

In rebuttal, the management examined, Sri Rajendra Kasar, Principal of Jawahar Navodaya Vidhayalay , Unnao who stated that the workman had been engaged as daily wager, intermittently and never completed 240 days in a year, hence the provisions of Section 25 F of the Act do not attract in his case. The management witness in Para 11 of his affidavit has given details of working of the workman, which is as under:

"The claimant has been engaged on daily wages basis intermittently due to exigencies of work during the year 1997 (December only) 1998 (January to April, August and December only), 1999 (January to March and October to December only), 2000 (January, March, April, August, September and November, December), 2001 (January, March, April, August, September and December only) and 2002 (January to 15th May, 2002)"

During cross-examination, when the management witness was questioned about the source of details of working days given by him in Para 11 of his affidavit, he stated that the details of working given by him is based upon the documents. He further stated that the statement made in Para 10 and 11 of his affidavit is based on the vouchers and payment record. However, he stated that the documents on the basis of which the statement in Para 10 and 11 of his affidavit are made, are filed with this Tribunal or not, he does not know.

21. Having regard to the statements made by the Sri Rajendra Kasar, Principal, Jawahar Navodaya Vidhyalay, Unnao, given by him in objection to the summoning application by the workman, M-27; wherein Para 6 of the same he stated that the documents summoned by the workman like Duty Register, Gate Entry Register of School and Monthly Pay Vouchers Sheets from 01.12.1997 to 15.05.2002 by efflux of time having been rendered redundant are not traceable and cannot be produced; but on the contrary in his statement given in his affidavit, filed in support of pleadings, M-37, he has very specifically given details of workings of the workman in Para 11 of the affidavit and during his cross-examination he stated that the details of working given by him is based on the documents i.e. vouchers and payment record.

This goes to show that the management of the Jawahar Navodaya Vidhyalay did not come with clean hand before this Tribunal and tried to conceal the documents and fact just in order to deprive the workman of his legitimate rights or make him unsuccessful in proving his pleading of 240 days of working. Furthermore, the management has also taken plea that the Class III & IV employees are employed as per Recruitment Rules; but failed to file any such Rules before this Tribunal. Hence, in view of facts and circumstances of the case and discussions made herein above as well as in order dated 25.09.2012, there is sufficient ground to draw an adverse inference against the management for non-production of the documents, summoned by the workman, and rely on the pleadings, documents filed and evidence adduced by the workman, particularly evidence of two former students of Jawahar Navodaya Vidhyalay, Unaо, in support of his claim.

22. Hon'ble Gujrati High Court in *Director, Fisheries Terminal Division vs. Bhakubhai Meghajibhai Chavda* 2010 AIR SCW 542; has observed that for proving 240 days' continuous working, the workman would have difficulty in having access to all official documents, muster rolls etc., in connection with his service, therefore, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. The management has failed to discharge the burden of proof; and there is sufficient evidence to show that the workman worked continuously from 01.12.1997 to 15.05.2002 and worked 240 days in preceding twelve months from the date of his termination; and his services have been terminated, illegally, by the management in utter violation of the provisions of Section 25 F of the Industrial Disputes Act, 1947.

23. Hon'ble Allahabad High Court in *State of U.P. vs. Mahendra Pal Singh & another* 2012 (2) ALJ 325 while scrutinizing the validity of the award of the Labour Court found that the findings of the Labour Court were not perverse; wherein the Labour Court drawn out a finding that the workman had continuously worked for more than 240 days in calendar months prior to termination of his services; and the termination of services was without any notice and without payment of retrenchment compensation; and accordingly, Hon'ble High Court held that the relief of reinstatement with 60% of back wages, awarded by the Labour Court was justified. Hon'ble High Court in para 47-50 of its judgment, has referred decision of Hon'ble Apex Court in *Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana)* (2010) 3 SCC 637: [AIR 2010 SC (Supp) 787] as under:

“47. the appellant worked as a daily wager under the respondent from 1.6.1988. His services were terminated in December, 1993. He served a notice of demand dated 30.12.1997 on the respondent contended that his services were terminated orally without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that he may be reinstated in service with full back wages from the date of illegal termination and he may be regularized according to the Government policy. The respondent did not respond to the demand made by the appellant and by an order dated 23.7.1999, the State Government referred the dispute under Section 10 of the Act to the Labour Court. Thereupon the Labour Court passed the award dated 18.7.2006 holding that the appellant had admittedly completed 267 days from 1.6.1988 to 30th April, 1989 and his services were terminated without any notice or notice pay and without payment of retrenchment compensation and the termination was, therefore, in violation of Section 25-F of the Act and the appellant was entitled to be reinstated in his previous post with continuity of service and 50% back wages from the date of demand notice i.e. 30.12.1997.

48. The respondent challenged the award of the Labour Court before the High Court of Punjab and Haryana, in writ petition and by order dated 9.12.2008, High Court allowed the said writ petition and set aside the award dated 18.7.2006 of the Labour Court and directed the respondent instead to pay compensation of Rs. 50,000/- to the appellant. Aggrieved by order dated 9.12.2008 of the High Court, the appellant filed appeal before the Apex Court. By placing reliance upon earlier decision rendered by the Apex Court in the case of Harjinder Singh (*supra*), allowed the appeal and set aside the impugned order dated 9.12.2008 passed by the High Court and directed that the appellant will be reinstated as a daily wager with 50% back wages forthwith.

49. While dealing with the question of discretionary powers of the Labour Court, in para 17 of the decision, Hon'ble Apex Court has observed as under:

“17. Wide discretion is, therefore, vested in the Labour Court while adjudicating an industrial dispute relating to the discharge or dismissal of a workman and if the Labour Court has exercised its jurisdiction in the facts and circumstances of the case to direct reinstatement of a workman with 50% back wages taking into consideration the pleadings of the parties and the evidence on record, the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India will not interfere with the same, except on well settled principles laid down by this Court for a writ of certiorari against an order passed by a court or a tribunal.”

50. *In the said case while drawing distinction between the cases of this nature and State of Karnataka vs. Umadevi (2006) 4 SCC 1: (AIR 2006 SC 1806 SC 1806) in para 22 of the said decision Hon'ble Apex Court held as under:*

22. *The decision of this Court in State of Karnataka v. Umadevi (3) cited by the counsel for the respondent relates to regularization in public employment and has no relevance to an award for reinstatement of a discharged workman passed by the Labour Court under Section 11-A of the Act without any direction for regularization of his services.”*

24. Thus, in view of the facts and circumstances of the case, discussions made hereinabove and law relied on, it is established that the workman, Vineet Kumar, who was engaged as daily wager by the management of Jawahar Navodaya Vidhyalay, Unnao had worked for more than 240 days in a year preceding the date of his termination and his services have been illegally terminated on 15.05.2002 by the management of the Jawahar Navodaya Vidhyalay, Unnao without following the mandatory provisions of the Section 25 F of the Industrial Disputes Act, 1947. Therefore, I am of the considered opinion that the workman, Vineet Kumar is entitled for reinstatement with continuity in service along with 60% of back wages within ten weeks of publication of the award, failing which; the back wages shall carry simple interest @ 6% per annum.

25. The reference is answered accordingly.

LUCKNOW

08th May, 2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 जून, 2017

का.आ. 1516.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रबंध निदेशक, हिंदुस्तान ऑर्गेनिक केमिकल्स लि., केरल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 17/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.06.2017 को प्राप्त हुआ था।

[सं. एल-42011/147/2012-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 13th June, 2017

S.O. 1516.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 17/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in Annexure, in the industrial dispute between the employers in relation to the Managing Director, Hindustan Organic Chemicals Ltd., Kerala and their workman, which was received by the Central Government on 07.06.2017.

[No. L-42011/147/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Monday the 24th day of April, 2017/04th Vaisakha, 1939)

ID 17/2013

Unions

- : 1. The General Secretary,
HOC Workers Union (CITU),
C/o Hindustan Organic Chemicals Ltd.,
Ambalamughal (Kerala) –
- 2. The General Secretary,
HOC Staff and Workers Union (INTUC),

C/o Hindustan Organic Chemicals Ltd.,
Ambalamughal (Kerala) –

By Adv. Shri. C. Anil Kumar

Management : The Managing Director,
Hindustan Organic Chemicals Ltd.,
Ambalamughal (Kerala) -

By M/s. Menon & Menon Advocates

This case coming up for final hearing on 06.04.2017 and this Tribunal-cum-Labour Court on 24.04.2017 passed the following:

AWARD

This is a reference under clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) for adjudication.

2. The dispute referred for adjudication is:

'Whether the action of the management of HOC in deducting the wages of the workmen for the period from 1.10.2011 to 7.10.2011 is correct. If not, what relief workmen are entitled to?'

3. After receipt of the reference Order No.L-42011/147/2012-IR(DU) dated 25.02.2013 issued by the Ministry of Labour, Government of India, summons was issued to the parties to appear, submit pleadings and produce documents to substantiate their respective contentions. On receipt of the summons the parties entered appearance through counsel and submitted their pleadings.

4. The contentions in the claim statement filed by the union Nos.1 and 2 in brief are as follows:-

The management is a Government of India enterprise. It has two units – one in Kerala and the other in Maharashtra. The service conditions of the workmen employed by the management are governed by the terms and conditions in the tri-partite settlements and agreements on promotion policy. Presently the management is employing 240 workmen. The unions in this reference represent all the employees in the workmen category under the management.

5. As per the prevailing promotion policy, the vacancies, except at the entry scales, should be filled up by promotion of workers from the category below that position. In the year 2010 three senior workers in the scale VII were transferred to the position of chemist (Panel Operations). In order to maintain the workers strength two upgraded workmen were transferred in the year 2010 to the Panel Operations. One year after that they were brought down to do the work of field operators. The management thereby denied the promotion avenues of senior workmen in the field production department. At the time when the panel operators were brought down to do the work of field operators in October and November, 2011; the dispute raised by the unions were pending conciliation before the Assistant Labour Commissioner(Central).

6. Against the illegal action of the management unions proposed a tool down strike in the production department w.e.f.01.10.2011. Before commencing the tool down strike by the workmen the management closed down the plant. When the workmen reported for duty on 01.10.2011 the plant was not functioning. Even though all the workmen registered their attendance as usual, they could not attend the work for the reason that the management had closed down the plants before the proposed tool down strike. When the plant was reopened by the management on 07.10.2011 the workers were available and attended the work. During the period from 01.10.2011 to 07.10.2011, there was no refusal on the part of the workmen to attend any work assigned to them.

7. The management while disbursing the salary for November, 2011 made illegal deductions from the salary of workmen without giving any notice to them, during the period the plant was shut down by the management. Being a penal action the management ought to have considered the submission of the individual workers before effecting deductions from salary. Actually the workers were present on the aforesaid seven days and they could not do the work for the reason that the management shutdown the plant.

8. The deduction from salary can be made only in accordance with the provisions of the Payment of Wages Act, 1936. The change in the duty schedule effected in October and November, 2011 was purely manpower restructuring, for which the management ought to have obtained the consent of the unions as provided under clause 26.5 of the memorandum of settlement dated 17.12.2001. While restructuring the manpower in the production department the management has not obtained consent from the unions. Therefore the unions have requested to pass an award to the effect that the deduction made by the management from the wages of the workmen for the period from 01.10.2011 to 07.10.2011 is illegal and to direct the management to pay the same to the workmen with interest and cost thereof.

9. The contentions in the written statement filed by the management in brief are as follows:-

The management has denied all the averments in the claim statement filed by the unions except those that are specifically admitted. The dispute referred for adjudication is not an industrial dispute and hence this Tribunal has no jurisdiction to adjudicate the same.

10. Hindustan Organic Chemicals Ltd. is a public Sector undertaking under the Ministry of Chemicals & Fertilizers, Government of India. It is a company incorporated under the Companies Act, 1956 with its registered office at Rasayani at Maharashtra. The management in this case is the unit at Ambalamughal. It is a petro-chemical industry engaged in the manufacture and sale of phenol, acetone and hydrogen peroxide etc. The main raw materials used in the company are LPG, Hydrogen, Benzene and intermediate products such as Propylene cumene and other allied items. All these raw materials are dangerous and hazardous chemicals. In the premises of the management substantial quantity of raw materials are stored and these are highly inflammable and explosive materials. The Government has classified the management's factory as a major accident hazard installation.

11. The service conditions of the workers employed in the Ambalamughal unit of the management are governed by various clauses in the certified standing orders and in accordance with the terms of settlement entered into between the management and the unions representing the workmen. The recruitment and promotion to different posts are also governed by the Recruitment Rules and Terms of Settlement entered into between the unions and the management.

12. The Production department of the management company consists of field workers, panel operators and officers. The Head of the Production department created six vacancies unauthorisedly in the shift schedule during January, 2010 by shifting field workers to panel operation. In that vacancy the workmen were engaged on overtime basis from January, 2010. When this unauthorized act of the head of the department was detected, the management initiated corrective action by rectifying the mistake by bringing back the panel operators to their original position of field workers. Thereby the engagement of six workers on overtime basis was discontinued from October, 2011. The shift schedule for October, 2011 was issued after rectifying the mistake.

13. The unions protested the action of the management and gave letter dated 23.09.2011. They demanded the withdrawal of the shift schedule notified by the management for October, 2011. As per letter dated 30.09.2011 the management informed the unions about the reason for issuing new shift schedule and requested them to withdraw the proposed tool down strike. The unions were not ready and willing to accept the request of the management and hence the matter was referred by the management for conciliation before the Assistant Labour Commissioner(Central). The Regional Labour Commissioner(Central), in presence of the Conciliation Officer convened a meeting on 01.10.2011. But no effective settlement could be arrived at. The Regional Labour Commissioner advised the unions to refrain from the proposed tool down strike. In spite of his advice the unions proceeded with the strike as notified by them. The chemical operators and chemists in the production department went on strike from 00:00 hrs on 01.10.2011. All the other workmen in the factory attended their duty.

14. The chemical operators and chemists totaling more than 50, after recording their attendance on 01.10.2011 went on strike. They staged dharna and shouted slogans in front of the control room. They refused to do the duty allotted to them stating that they were on strike. The duty officer reported the matter before the management. The action of the workmen is in clear violation of the injunction order passed by the Munsiff's Court, Perumbavoor in O. S. No.55/2011. Since the workers resorted to illegal track within the plant area, in view of the absence of operating personnel, the management decided to shut down the plant on the safety point of view. The management shut down the plant after the commencement of the strike by the chemical operators and chemists. The management could not restart the plant since the workmen continued the strike. The unions withdrew the strike on 07.10.2011 and the plant was restarted on the same day.

15. The management issued a circular dated 01.10.2011 intimating the workmen that mere marking of attendance will not enable them to draw wages since the employees were resorted to tool down strike. It was made clear that those who were on strike will not be paid wages. For this reason wages were not paid to the striking workers for the period from 01.10.2011 to 07.10.2011. The management decided so on the basis of the doctrine of "No Work No Pay".

16. The said action of the management was challenged before the Central Administrative Tribunal, Ernakulam bench by filing O. A. No.634/2012. As per the order dated 12.12.2012 the Tribunal dismissed the application.

17. The contention of the unions that the management denied the promotional prospects of the workmen by bringing back them to their original position after one year, is not sustainable in law for the reason that the transfer of workmen as panel operators effected by the HOD unauthorisedly. In the order in O. A. No.634/2012 the Central Administrative Tribunal has upheld the action of the management. The contention of the unions that the management shut down the plant before the commencement of the tool down strike by the workmen is false and incorrect. The plant was shut down by the management after the commencement of the strike by the workmen at 00:00 hrs. on 01.10.2011. The striking workers did not attend duty for the period from 01.10.2011 to 07.10.2011. They were on strike during that

period. Therefore the management is well within their right in deducting the salary of the workmen during the period they did not attend duty on the basis of the doctrine of “No Work No Pay”.

18. The contention of the unions that the action of the management is clear violation of the settlement dated 17.12.2001 is absolutely false. The lateral movement of the personnel within the department for operational requirement is not manpower restructuring. So also the terms and conditions of the settlement dated 17.12.2001 expired on 31.12.2006 and the subsequent settlement has no clause similar to clause 26.5 of the earlier settlement. Therefore the management has requested to disallow the claim of the unions and to pass an award to that effect.

19. After filing written statement by the management the unions filed rejoinder reiterating the contentions in the claim statement.

20. After affording sufficient opportunity to the parties to take steps and for production of documents, the matter was posted for evidence. On behalf of the unions WW1 was examined and Exts.W1 to W3 are the documents marked. On behalf of the management MW1 and MW2 were examined and Exts.M1 to M16 are the documents marked. Heard both sides.

21. The points arising for consideration are:

- (i) **Whether the action of the management of Hindustan Organic Chemicals in deducting the wages of the workmen from the period from 01.10.2011 to 07.10.2011 is just, legal and proper?**
- (ii) **Whether the workmen are entitled to any relief? If so, to what extent?**

22. Point Nos.(i) & (ii):- The dispute referred for adjudication before this Tribunal is:

‘Whether the action of the management of HOC in deducting the wages of the workmen for the period from 1.10.2011 to 7.10.2011 is correct. If not, what relief workmen are entitled to?’

23. The management in this case is a public sector undertaking, incorporated as a company under the Companies Act, 1956, coming under the Ministry of Chemicals & Fertilizers, Government of India. The unit at Ambalamughal in Kerala is a petro-chemical industry engaged in the manufacture and sale of phenol, acetone and hydrogen peroxide etc. The main raw material used by the company for the manufacture of their products are LPG, Hydrogen, Benzene and intermediate products such as propylene cumene etc. All these raw materials are hazardous and dangerous chemicals. Large quantity of raw materials and products are stored in the premises of the management company. The Government has classified the factory of the management as a major accident hazard installation.

24. The service conditions of the workers in the unit at Ambalamughal are in accordance with the terms and conditions in the certified standing orders and settlement entered into between the management and the unions from time to time. The recruitment and promotion to the different posts are governed by Recruitment Rules and the terms of settlement entered into with the unions.

25. The production department consists of field workers, panel operators and officers. The unions have stated that during the year 2010, three senior workers in scale VII were transferred to fill the vacant position of chemist (panel operations) and in order to maintain workers strength two more upgraded workmen were transferred to panel operation in the year 2010. It is stated that after allowing them to work as chemist (panel operations) for more than one year, they were brought down to work as field operators and thereby the management denied the promotion avenues to the senior workmen in the production department.

26. The unions raised industrial dispute in this regard before the Conciliation officer – the Assistant Labour Commissioner(Central) in relation to the demand for filling up the vacancies in the workmen category of chemist (panel operations). The unions proposed for a tool down strike with effect from 01.10.2011. According to the unions, before commencing the proposed tool down strike, the management shut down the plant by the evening of 30.09.2011. It is noted that when the workmen reported for duty on 01.10.2011, they could not attend the work as the plants were shut down by the management prior to the proposed tool down strike. It is stated that when the plant was reopened on 07.10.2011, the workers were available and attended the work. According to the unions during the period from 01.10.2011 to 07.10.2011, no workmen refused to attend the work.

27. While disbursing the salary for November, 2011 the management deducted the salary payable from 01.10.2011 to 07.10.2011 from the out of the amount payable to the workmen. According to the unions the said action by the management is unjust and illegal and they have no right to do so without giving notice to the workmen and hearing them. The unions have stated that the change in duty schedule was nothing but manpower restructuring, for which the management has to obtain consent from the unions as provided under clause 26.5 of the memorandum of settlement dated 17.12.2001.

28. Therefore the unions have requested to pass an award holding that the action of the management in deducting the salary of the workmen for the period from 01.10.2011 to 07.10.2011 as illegal, unjust and to direct them to pay the same with interest and cost.

29. The management has stated that the head of the production department unauthorisedly created six vacancies in the shift schedule in January, 2010 by shifting field workers to the panel operation. It is stated that in the said six vacancies workmen were engaged on overtime basis from January, 2010. When the management detected the unauthorized action of the HOD, they took corrective action by rectifying the defect.

30. It is stated that the union objected the action of the management and they served strike notice. It is stated that the management shut down the plant after the chemical operators and chemists commenced the strike. It is stated that the decision to that effect was taken from the safety point of view. It is stated that the union withdrew the strike on 07.10.2011 and the plant was restarted on the same day.

31. The unions had challenged the decision of the management to bring back the workmen from the panel operation to their original position, before the Central Administrative Tribunal, Ernakulam through O. A. No.634/2012. The Central Administrative Tribunal, Ernakulam bench dismissed the same as per order dated 12.12.2012.

32. While examined as WW1, the General Secretary of the first union has stated that the raw materials used for the products in the management company are hazardous and dangerous chemicals. He has stated that the State Government has classified the management company as a major accident hazard unit. WW1 has admitted that from the Munsiff Court, Perumbavoor there was an injunction order against violating the law and order situation. He has stated that on 23.09.2011 both unions have served a notice of tool down strike to the management. He has admitted that the case filed as O. A. No.634/2012 before the Central Administrative Tribunal, Ernakulam ended in dismissal.

33. WW1 has stated that what is meant by tool down strike was that on that day they will not do any work. According to WW1, the management had shut down the plant on 30.09.2011 itself. He has stated that from 01.10.2011 to 07.10.2011 the workmen were present in the plant but the management has not assigned any work to them on those days.

34. While examined as MW1, the General Manager(P & A) of the management has stated that the unions served notice intimating that they will be on tool down strike from 01.10.2011. He has stated that the plant was shut down at 02:30 am on 01.10.2011 and this aspect is recorded in the log book. He has stated that the workmen resumed the work on 07.10.2011 by 6:00 – 6:30 pm and the start up activities commenced by 7:00 pm. MW1 has stated that during the period from 01.10.2011 to 07.10.2011, the workmen have punched their attendance but none of them attended the work. He has denied the suggestion that it was the management who denied the opportunity of the workmen to do the work. MW1 has stated that the wages of the workmen who went on strike were deducted by the management on the basis of 'No Work No Pay'.

35. MW2 has stated that Ext.M8(a) is the report submitted by him on 03.10.2011 before the management. MW2 has stated that all the eight persons mentioned in Ext.M8(a) are plant operators. He has stated that the shutdown of the plant commenced after 12:00 midnight on 30.09.2011. MW2 has stated that the plant operators informed him that they were on tool down strike and hence they will not do any work. He has denied the suggestion that the management shut down the plant for the reason that they received the strike notice from the union.

36. Both unions as well as the management adduced oral evidence and produced documents to substantiate their respective contentions. The fact that the notice of tool down strike w.e.f.01.10.2011 was served by the unions before the management is admitted. It has come out in evidence that the unions withdrew the strike and resumed for work on 07.10.2011.

37. The contention of the management is that they deducted the salary for the strike period on the basis of "No Work No Pay". Admittedly the workmen involved in the reference have not done any work during the period from 01.10.2011 to 07.10.2011. They have no case that they have withdrawn the strike prior to 07.10.2011. Therefore it is evident that the workmen have not done any work during the period from 01.10.2011 to 07.10.2011. In such circumstance the management is well within their right in deducting the salary of the workmen who were on strike from 01.10.2011 to 07.10.2011 on the principle of "No Work No Pay". It follows that the unions are not entitled to get the relief as per this reference. The claim put forward by the unions is not sustainable in law. Hence the points for consideration are answered against the unions and in favour of the management.

38. In the result an award is passed holding that the unions are not entitled to get any relief as per this reference.

The award will come into force one month after its publication in the Official Gazette.

Pronounced by me in the Open Court on this the 24th day of April, 2017.

SASIDHARAN K., Presiding Officer

APPENDIX**Witnesses for the unions**

WW1 11.01.2016 Shri. M. Y. Kuriachan

Witnesses for the management

MW1 29.08.2016 Shri. S. Sanil Kumar

MW2 27.01.2017 Shri. Santhosh. V.

Exhibits for the unions

W1 - True copy of the relevant pages of the Standing Orders for Hindustan Organic Chemicals Limited, Phenol Project, Ambalamughal, Cochin.

W2 - True copy of the additional statement dated 15.11.2011 filed before the Assistant Labour Commissioner(Central), Ernakulam by the General Secretary, Hindustan Organic Chemicals Workers Union (CITU), Ambalamughal, Ernakulam.

W3 - True copy of the shift schedule for the month of September, 2011 issued by the Dy. General Manager(Prodn) thro' General Manager(Prodn) of the production department of the management company.

Exhibits for the management

M1 - Copy of the shift schedule for the month of January, 2010 issued by the Dy. General Manager (Prodn) of the production department of the management company.

M2 - Copy of the note No.ED.PNL.11 dated 21.09.2011 issued by the Executive Director to the GM(PRDN) thro' CGM(P/P) of the management company

M3 - Copy of the shift schedule for officers for the month of October, 2011 issued by the Dy. General Manager(Prodn) thro' General Manager(Prodn) of the production department of the management company.

M4 - True copy of the letter No.Nil dated 23.09.2011 issued by the General Secretaries of the two unions to the GM(P&A), HOCL, Ambalamughal.

M5 - True copy of the letter No.P&A/2011/1856 dated 30.09.2011 issued by the General Manager(P&A), Hindustan Organic Chemicals Limited to the General Secretaries of the two unions.

M6 - True copy of the letter No.P&A/IR/2011/ dated 30.09.2011 addressed to the Asst. Labour Commissioner(Central), O/o the Regional Labour Commissioner(Central), Kakkanad, Kochi by the General Manager(P&A), Hindustan Organic Chemicals Limited, Ambalamughal.

M7 - True copy of the minutes of the Conciliation Proceedings held before the Regional Labour Commissioner(Central) on 01.10.2011 in the strike resorted by the two unions demanding withdrawal of the shift schedule in production department (No.8/53/2011-B.1 dated 01.10.2011).

M8 - Copy of the report dated Nil submitted by the Manager(P) to the GM(Production) of the management company.

M8(a) - Copy of the report dated 03.10.2011, Second shift submitted by the CM(P) to the ED of the management company.

M9 - Copy of the report dated 01.10.2011, (First, Second & Third Shifts) submitted by the duty officers of the management company.

M9(a) - Copy of the report dated 02.10.2011, (First Shift, Second & Third Shifts) submitted by the duty officers of the management company.

M9(b) - Copy of the report dated 03.10.2011, (First Shift, Second & Third Shifts) submitted by the duty officers of the management company.

M9(c) - Copy of the report dated 04.10.2011, (First Shift, Second & Third Shifts) submitted by the duty officers of the management company.

- M9(d) - Copy of the report dated 05.10.2011, (First Shift, Second & Third Shifts) submitted by the duty officers of the management company.
- M9(e) - Copy of the report dated 06.10.2011, (First Shift, Second & Third Shifts) submitted by the duty officers of the management company.
- M9(f) - Copy of the report dated 07.10.2011, (First Shift, Second & Third Shifts) submitted by the duty officers of the management company.
- M10 - True copy of the letter No.HOC/CMD/KOCHI/2011-12 dated 07.10.2011 issued by the Chairman & Managing Director, Hindustan Organic Chemicals Limited, Mumbai to the General Secretaries of the two unions.
- M11 - Copy of the report dated 07.10.2011, Third shift submitted by the Duty Officer of the management company.
- M12 - True copy of the Circular No.P&A/4(7)/2011/122 dated 01.10.2011 issued by the General Manager(P&A) of the management company to all workmen.
- M13 - True copy of the internal letter No.P&A/2036 dated 24.10.2011 issued by the Duty Officer, Hindustan Organic Chemicals Limited, Ambalamughal to the GM-PRODN-IN-CHARGE through DGM-PRODN.
- M14 - True copy of the Order on Original Application No.634/2012 dated 12.12.2012 filed before the Central Administrative Tribunal, Ernakulam bench.
- M15 - True copy of the Memorandum of Settlement dated 17.12.2001 entered into between the management company and the two unions on behalf of the workmen before the Regional Joint Labour Commissioner(Central Zone)/Conciliation Officer, Ernakulam.
- M16 - True copy of the Memorandum of Settlement dated 25.03.2011 entered into between the management company and the workmen represented by the two unions before the Regional Labour Commissioner (Central) & Conciliation Officer, Cochin.

नई दिल्ली, 13 जून, 2017

का.आ. 1517.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, पान्कजा मिल्स, कोइम्बतोर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 8/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-42011/05/2016-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 13th June, 2017

S.O. 1517.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 8/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Pankaja Mills, Coimbatore and their workman, which was received by the Central Government on 08.06.2017.

[No. L-42011/05/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, 18th May, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 8/2016

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Pankaja Mills and their workman]

BETWEEN :

The General Secretary : 1st Party/Petitioner Union
 Coimbatore & Periyar District Dravida Panchalai
 Thozhilalar Munnetra Sangam
 134/154, Pankaja Mills Colony
 Ramanathapuram
 Coimbatore-641045

AND

The General Manager : 2nd Party/Respondent
 Pankaja Mills
 30, Pankaja Mill Road, Post Box No. 7109
 Coimbatore – 641045

Appearance :

For the 1st Party/Petitioner Union : M/s K. Chol Arasan, A. Balakumar, Advocates
 For the 2nd Party/Management : M/s T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-42011/05/2016-IR (DU) dated 02.02.2016 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the Management of Pankaja Mills in terminating the services of the workman Smt. N. Radhika on 01.08.2014 is illegal, arbitrary and in violation of Section-25F of the ID Act? If yes, to what relief the workman is entitled to and from which date?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 8/2016 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement

3. The averments in the Claim Statement filed by the petitioner in brief are as below:

The Petitioner Union has raised the dispute on behalf of Radhika, a member of the Union who had been working under the Respondent in Cone Winding Department as a General Permanent since 01.07.2010. Radhika was served with Show Cause Notices for certain alleged misconducts. Radhika has denied the charges and submitted a reply. The allegation against Radhika is that she had manipulated the Attendance Registers maintained by the Respondent and had obtained salary for the days on which she was absent. The case is that this was done in connivance with one Amalraj who is working as a Time-Keeper of the Respondent. The Respondent had issued Charge Sheet and conducted domestic enquiry on the charges. On the basis of the report of enquiry Radhika was terminated from the service of the Respondent. Enquiry against Radhika was not conducted in accordance with the principles of natural justice. There was no justification for the Management terminating Radhika from service. An Award may be passed reinstating Radhika in service with backwages, continuity of service and other attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The Respondent is one of the seven mills in Tamil Nadu belonging to National Textile Corporation Ltd. It has its own Certified Standing Orders. It maintains a multi-level cross-checking system for recording attendance of its workmen. Prior to 2013 attendance used to be recorded by punching system. In addition there was the practice of simultaneous marking of attendance of the workmen in their respective departments. The attendance recoded in the punching cards at the gate will be compared with the attendance recorded in their departments and discrepancy if any will be corrected. This system was subsequently replaced by Digital Attendance Recording System. In January 2014 Kuppusamy, one of the Shift Time-Keepers noticed a workman who was absent from duty having been marked as present. The matter was reported and further probe was made. On compiling the attendance records of Radhika, the concerned workman it was found that she was a beneficiary of payment of excess wages for the days of her absence during the period from January 2013 to January 2014. During this period, on days of her absence her attendance records were corrected to show that she was present on those days. The Head Time-Keeper submitted a report regarding the attendance records of Radhika and four other workmen which were manipulated by Amalraj, one of the Shift Time-Keepers altering the dates of absence as dates of present. The five workmen together have received more than Rs. 50,000/- as wages for the days not worked. Radhika, the concerned workman was found given attendance and wages for 14 days though she had not worked on these days. A Charge Sheet was issued to the workman for colluding

with the Time-Keeper Amalraj and getting her attendance records manipulated enabling her to draw wages for the days on which she had not turned up for duty. She was placed under suspension and enquiry was conducted against her. The Enquiry officer gave his report holding that the charges against the concerned workman were proved. Notice was issued to her proposing punishment of dismissal from service. She had given a reply to this. A Show Cause Notice was issued calling for her representation. After considering her representation she was dismissed from service by order dated 01.08.2014, making the dismissal effective from 14.02.2014. The averments in the Claim statement that enquiry was not conducted in a fair and proper manner is not correct. If the enquiry is found to be defective the Respondent is ready to lead evidence. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the allegations in the Counter Statement and reiterating the case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and WW2 and documents marked as Ext.W1 to Ext.W3 and Ext.M1 to Ext.M74.

7. **The points for consideration are:**

- (i) Whether the action of the Respondent in terminating the concerned workman from service is justified?
- (ii) What, if any is the relief to which the petitioner is entitled?

8. The concerned workman Radhika on whose behalf the dispute is raised was working in the Cone-Winding Department of the Respondent Mill as a General Permanent. On 12.02.2014 a Charge Memo was issued to her alleging that she had manipulated the Attendance Registers maintained by the Respondent in connivance with Amalraj, a Time-Keeper of the Respondent and had obtained salary on certain days on which she was absent also. The concerned workman was dismissed from service on the basis of the report in a domestic enquiry conducted based on a Charge Sheet. The dispute is raised challenging the dismissal.

9. The petitioner has stated in the Claim Statement that domestic enquiry against the concerned workman was not conducted in a fair and proper manner. However, the petitioner has not pursued this contention or asked for a Preliminary Finding in this respect. The petitioner has proceeded with the dispute as if it is not disputing the fairness of the enquiry. In any case, on going through the enquiry proceedings it could be seen that it was done in a fair and proper manner. Notice of enquiry was given to the concerned workman and she has fully participated in the proceedings.

10. The question to be considered is whether the allegation of misconduct against the concerned workman has been proved in the enquiry proceedings. An English Translation of Charge Memo and the enquiry proceedings which are in Tamil have been submitted before the Tribunal. A Show Cause Notice was issued to the concerned workman and order of suspension was also served on her on 12.02.2014. Ext.M3 is the enclosure to the order of suspension. This gives the details of the corrections allegedly made in the Attendance Register. The dates on which the concerned workman was shown as present and had drawn wages though she was absent are given in this enclosure. Ext.M1 is the Charge Sheet issued to the concerned workman. In this it is stated that she had received excess wages unlawfully by correcting the attendance register with the help of Time-Keeper Amalraj who was engaged in the job of marking attendance and that this was done for her personal gains. Ext.M2 is the reply submitted by her in which she has stated that she is drawing her wages through the ATM of Indian Overseas Bank and she should be permitted to resume duty by cancelling her suspension

11. It was on the basis of the report given by Kuppusamy, the Time-Keeper disciplinary proceedings had been initiated against the concerned workman, Radhika and some other workmen who had allegedly committed similar misconducts. Kuppusamy is the Time-Keeper at the Gate. He has reported that at the department the concerned workman and some others have been noted as present by Amalraj who was entering the Shift Muster Roll. Pasupathy, the Head Time-Keeper had submitted Ext.M6 report to the General Manager as instructed, after it was revealed that manipulations were made in the Attendance Register. The name of the concerned workman Radhika appears as No. 2 in the report and she is shown to have been present on 14 days on which she was actually absent, all during the period from February 2013 to December 2013. The report contains the manipulations in respect of others also. Ext.M7 the subsequent report by Pasupathy states that Amalraj, the Time-Keeper is involved in making false entry in the Attendance Register. He is said to have corrected the Attendance Register by replacing the marking of absence as presence.

12. The Head Time Keeper, Pasupathy has given evidence in the enquiry proceedings as MW1. He has stated during his evidence that the mark of absence in respect of the concerned workman has been found erased and was noted as present for 2 or 3 days every month in the year 2013. He has stated that she has committed the act jointly with Amalraj, the Time-Keeper. He had given the dates on which she was actually absent but was shown as present and had obtained wages. He had described the procedure for marking attendance. He has stated that when the employees enter the premises the Shift Maistry will enter T.Nos. in the Maistry Note placing them in the machine and hand over the said note to the Shift Time-Keeper after obtaining the signature of the Supervisor. The Shift Time Keeper will then enter T.

Nos. of the employees in the number note kept in the Time-Office. Marking will be made in the Muster Roll with reference to the T. Nos. entered in the number note. The Shift Time-Keeper will be closing the Muster Roll at the end of the month and the Head Time-Keeper will be preparing wages at the end of the month on the basis of the above entry. During cross-examination of MW1 attempt was made to bring out that as the concerned workman was drawing salary through ATM she could not be expected to be aware of the excess payment made to her. MW1 has replied that Wage Slip will be issued to the employee at the end of every month and the particulars' of number of days on leave, etc. will be entered in the Wage Slip and the workman would necessarily be aware of excess payment because of this.

13. There is evidence given by MW2, Kuppusamy who was working as Temporary Time-Keeper. He has stated that he has verified the Muster Roll of "A" shift on 04.02.2014 and had noticed that though he had marked the concerned workman to be absent on 20.01.2014 it was found corrected as present. On this basis he has submitted explanation to the Management regarding this. The only cross-examination by the concerned workman is that she herself is not responsible for the correction but those who made entry are responsible. She has admitted in the enquiry proceedings that before day of wages, on the second day of every month check-list used to be displayed in the Notice Board of the factory and this will contain the particulars of number of days worked, holidays, leave particulars, layoff, etc. She has also admitted that she had not intimated the Management regarding the excess amount reflected in the Check-List. Thus it could be seen that even during the enquiry proceedings the concerned workman did not dispute the fact that she had received wages for those days on which she was absent also and that though she was aware of this she had not informed the Management about this.

14. Even during the proceedings before this Tribunal the concerned employee had not taken the stand that the case of Management that she had received wages for days on which she was absent is not correct. The General Secretary of the Union has been examined as WW1. What he has stated in the Proof Affidavit is that the manipulation was done by Time-Keeper Amalraj and not by the concerned workman. It is further stated in the affidavit that the concerned employee does not have any access to the Attendance Register which is under the control of said Time-Keeper and the employee could not be expected to have any hand in the manipulation. Even in the Proof Affidavit of the concerned employee examined as WW2 it is impliedly admitted that she had received wages for the days on which she was absent. What she has stated in the Affidavit is that the Management was negligent and did not notice the manipulation for about 13 months. She has further stated that there is nothing to show that she had paid any amount as bribe to Amalraj, she being the beneficiary of manipulation.

15. It is very much apparent that the concerned employee was fully aware of what was happening. She has received excess wages not for just one day of her absence or for a few days in a month in which case it could probably be described as oversight on her part. For almost 12 months continuously she was receiving wages for those days on which she was absent. During all these months a check-list has been published in the Notice Board and she must have gone through the Check-List also. The concerned employee is an educated woman, she had done B.Com. Course, though she had not passed the examination. So her knowledge and involvement in the matter is a certainty. There is no reason to change the view taken by the Enquiry Officer in this respect.

16. The concerned workman had been dismissed from service for the proved misconduct. The question now to be considered is whether she deserves such a drastic punishment for the misconduct proved against her. The counsel for the Respondent has referred to the decision of the Apex Court in APSRTC VS. RAGHUDA SIVASANKAR PRASAD reported in 2007 1 SCC 222 where it was held that There is no place for generosity or sympathy on the part of the judicial forums in interfering with the quantum of punishment. It was further held that loss of confidence in such cases occupy the primary factor and generosity cannot be a factor which is permissible in law in such matters. It was a case of theft by a Mechanic working under the APSRTC. The question is whether the punishment that was imposed on the petitioner is proportionate to the misconduct that was committed by her and not a question of sympathy or generosity. When the facts and circumstances are considered it could be seen that the concerned workman does not deserve the drastic punishment of dismissal from service. The circumstances under which the incident had occurred are to be considered in this respect. There is no case for the Respondent that the concerned employee herself committed the manipulation. She had received wages for certain days on which she had not worked. The question of loss of confidence does not arise in this case as the workman is not working in a position which requires involvement with the public. She is not dealing with the financial side of the Management also. She is just an ordinary workman receiving a small amount for her daily work. She does not have any hand in running the establishment. Even the alleged manipulation would not be possible for her by herself, without aid from outside. So there is no necessity to invoke the theory of loss of confidence in the present matter. A lesser punishments would have been sufficient for the concerned workman. By now she might have already suffered in the absence of work. She can be reinstated in service without any backwages. She should also be brought down to the next lower pay-scale and put at the bottom of the seniority list in the category in which she was working.

17. On the basis of the above discussion an Award is passed as below:

The petitioner shall be reinstated in the service of the Respondent within two months of the publication of the Award.

The petitioner shall be put under the pay-scale one level lower to the present one and placed at the bottom of the Seniority List as on the date of termination in the category.

She will not be entitled to any backwages.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 18th May, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner Union	:	WW1, Sri S. Parthasarathy
		WW1, Smt. N. Radhika
For the 2 nd Party/Management	:	None

Documents Marked:

On the Petitioner's side

Ext.No.	Date	Description
Ext.W1	-	Findings of the Enquiry
Ext.W2	-	Termination Order
Ext.W3	-	Notice from Respondent

On the Respondent's side

Ext.No.	Date	Description
Ext.M1	12.02.2014	Charge Memo issued to N. Radhika – Ticket No. 40-0043
Ext.M2	15.02.2014	Explanation of Radhika – T.No. 40 – 9943
Ext.M3	15.02.2014	Annexure to the Show Cause Notice dated 15.02.2014
Ext.M4	01.03.2014	Second Additional Annexure to the Show Cause Notice
Ext.M5	04.02.2014	Complaint of P. Kuppusamy – Time Keeper
Ext.M6	08.02.2014	Report of K. Pasupathi – Head Time Keeper
Ext.M7	24.02.2014	Additional Report of Pasupathi – Head Time Keeper
Ext.M8	12.03.2014	Reply of Radhika
Ext.M9	04.04.2014	Notice of Enquiry issued to Radhika – Enquiry on 08.04.2014
Ext.M10	05.01.2013 07.02.2013 13.01.2013	Cone Winding – Maistry Report – Page 50 and 51 – Extract
Ext.M11	24.12.2012 To 14.01.2013	Number Note P.166 & 167 – Extract – Dated 13.01.2013
Ext.M12	Jan., 2013	Muster Roll – Extract – Radhika
Ext.M13	Jan., 2013	Salary Register S.No. 327 – N. Radhika
Ext.M14	05.08.2013	Cone Winding Maistry Report – Extract – Page 97

Ext.M15	05.08.2013	Number Note P.162 and 163
Ext.M16	Aug., 2013	Pay Slip – N. Radhika – T.No. 40-9943
Ext.M17	11.02.2013	Cone Winding Maistry Report – Extract
Ext.M18	06.03.2013	Cone Winding Maistry Report – Extract – Page 155
Ext.M19	10.04.2013	Cone Winding Maistry Report – Extract – Page 168
Ext.M20	11.05.2013	Cone Winding Maistry Report – Extract – Page 156
Ext.M21	12.06.2013	Cone Winding Maistry Report – Extract – Page 152
Ext.M22	13.07.2013	Cone Winding Maistry Report – Extract – Page 156
Ext.M23	13.08.2013	Cone Winding Maistry Report – Extract – Page 148
Ext.M24	10.10.2013	Cone Winding Maistry Report – Extract – Page 66
Ext.M25	12.11.2013	Cone Winding Maistry Report – Extract – Page 43
Ext.M26	19.11.2013	Cone Winding Maistry Report – Extract – Page 74
Ext.M27	10.12.2013	Cone Winding Maistry Report – Extract – Page 180
Ext.M28	11.12.2013	Cone Winding Maistry Report – Extract
Ext.M29	06.03.2013	Cone Winding Maistry Report – Extract
Ext.M30	10.04.2013	Cone Winding Maistry Report – Extract
Ext.M31	11.05.2013	Cone Winding Maistry Report – Extract
Ext.M32	12.06.2013	Number Note
Ext.M33	13.07.2013	Number Note
Ext.M34	13.08.2013	Number Note
Ext.M35	10.10.2013	Number Note
Ext.M36	12.11.2013	Number Note
Ext.M37	19.11.2013	Number Note
Ext.M38	10.12.2013	Number Note
Ext.M39	Feb., 2013	Muster Roll – Extract – Radhika
Ext.M40	March, 2013	Muster Roll – Extract – Radhika
Ext.M41	Apr., 2013	Muster Roll – Extract – Radhika
Ext.M42	May, 2013	Muster Roll – Extract – Radhika
Ext.M43	June, 2013	Muster Roll – Extract – Radhika
Ext.M44	July, 2013	Muster Roll – Extract – Radhika
Ext.M45	August 2013	Muster Roll – Extract – Radhika
Ext.M46	Oct., 2013	Muster Roll – Extract – Radhika
Ext.M47	Nov., 2013	Muster Roll – Extract – Radhika
Ext.M48	Dec., 2013	Muster Roll – Extract – Radhika
Ext.M49	Feb., 2013	Pay Slip – N. Radhika
Ext.M50	March, 2013	Pay Slip – N. Radhika
Ext.M51	April, 2013	Pay Slip – N. Radhika
Ext.M52	May, 2013	Pay Slip – N. Radhika

Ext.M53	June, 2013	Pay Slip – N. Radhika
Ext.M54	July, 2013	Pay Slip – N. Radhika
Ext.M55	Oct., 2013	Pay Slip – N. Radhika
Ext.M56	Nov. 2013	Pay Slip – N. Radhika
Ext.M57	Dec., 2013	Pay Slip – N. Radhika
Ext.M58	16.04.2014	Notice – Regarding correction of date
Ext.M59	07.05.2014	Enquiry Officer's Report (filed by petitioner on 06.10.2016)
Ext.M60	19.05.2014	Letter from Mills to Radhika enclosing Enquiry Report and calling for her reply
Ext.M61	19.05.2014	Reply of Radhika to the letter dated 19.05.2014 of the Mills
Ext.M62	16.07.2014	Second Show Cause Notice issued to Radhika proposing punishment of dismissal from service and calling for her representation
Ext.M63	19.07.2014	Representation of Radhika
Ext.M64	13.08.2014	Letter from Radhika acknowledging receipt of Mill's letter of 01/08/2014
Ext.M65	13.11.2015	Letter from Respondent Mills addressed to Regional Labour Commissioner (Central), Madurai on reply to Union's letter of 21.05.2015
Ext.M66	12.01.2016	Conciliation failure report of Deputy Commissioner of Labour (Central), Chennai
Ext.M67	01.08.2014	Letter from Respondent Mills to K. Poongodi enclosing dismissal order
Ext.M68	01.08.2014	Letter from Respondent Mills to R. Balasubramaniam enclosing order of dismissal
Ext.M69	01.08.2014	Letter from Respondent Mills to A.T. Amalraj enclosing dismissal order
Ext.M70	08.04.2014 15.04.2014 16.04.2014 23.04.2014	Proceedings of Enquiry
Ext.M71	12.01.2016	Conciliation failure report of Dy. Chief Labour Commissioner (Central), Chennai – M/8/5/2015 – B1
Ext.M72	21.05.2015	Dispute raised by Coimbatore & Periyar District Dravida Panchalai Thozhilalar Munnetra Sangam before the Regional Labour Commissioner (Central), Madurai – Reg. Non-Employment of N. Radhika – Annexure-I of Conciliation failure report dated 12.01.2016 – (vide Page-87 in Respondent's Typeset dated 09.07.2016) with its liberal translation
Ext.M73	01.07.2015	Management's reply – addressed to RLC (C) Madurai (vide Annexure-II of Conciliation failure report) with its liberal translation
Ext.M74	20.10.2015	Union's reply to RLC (C), Madurai – (Annexure-III of Conciliation Failure Report) with its liberal translation

नई दिल्ली, 13 जून, 2017

का.आ. 1518.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सचिव, कोइर बोर्ड, कोचीन व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 9/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 13th June, 2017

S.O. 1518.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (LC No. 9/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in Annexure, in the industrial dispute between the employers in relation to the Secretary, Coir Board, Cochin & others and their workman, which was received by the Central Government on 04.01.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 15th day of November, 2016

INDUSTRIAL DISPUTE No. LCID 9/2008

Between :

Syed Moulana,
S/o Sillar, Ex-Safaiwala,
D No 1-3-87, Beside Masjid,
Pichen, Line,
Samalkot, East Godavari District

...Petitioner

AND

1. The Secretary,
Coir Board, Cochin,
 2. Regional Coir Development Officer
RCT & DC, Rajahmundry, E G District
- ...Respondent

Appearances :

- | | | |
|----------------------|---|---|
| For the Petitioner | : | A K Jayaprakash Rao & M Govind, Advocates |
| For the Respondent 1 | : | S Raja Shekar Rao, Advocate |
| For the Respondent 2 | : | No representation |

AWARD

This is a petition filed under section 2(A)(2) of Industrial Disputes Act 1947 with a prayer to pass an award against the Respondents by setting aside the order dated 18.03.2003 terminating the petitioner/workman with effect from 28.1.2003 as illegal, arbitrary and unconstitutional and consequently direct the management to reinstate the workman with back wages and continuity of service with attendant benefits. The case is registered and numbered as LCID. No. 9/2008 and notices were issued to the parties concerned.

2. The Respondent has filed a detailed counter on 20.6.2011 denying the allegations made by the petitioner. The case is posted to 14.9.2011 for petitioner's evidence. At the request of the petitioner's counsel the case is adjourned to 29.12.2011 and 13.3.2012.
3. Since 13.3.2012, there is no representation on behalf of the petitioner nor he adduced any evidence on his behalf to prove his case. It is not wise to defer the matter to any other date. None appearance of the parties clearly indicates that perhaps the matter has been settled between the parties and there is no dispute exists between the parties. it is felt that the Petitioner is not interested in pursuing the dispute. In the circumstances stated above 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Shri J Vijaya Sarathi, Secretary to the Court, corrected by me on this the 15th day of November, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 19 जून, 2017

का.आ. 1519.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 20/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.06.2017 को प्राप्त हुआ था।

[सं. एल-41011/05/96-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th June, 2017

S.O. 1519.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/1997) of the Central Government Industrial Tribunal-cum-Labour Court, Kota as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 19.06.2017.

[No. L-41011/05/96-IR (B-I)]

B. S. BISHT, Section Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी – श्री जगमोहन शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ.न्या.(केन्द्रीय)-20 / 1997

दिनांक स्थापित : 10 / 7 / 97

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश

क्र. एल-41011 / 05 / 96-आईआर(बी) दि. 30 / 6 / 97

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क) औद्योगिक विवाद अधिनियम, 1947

मध्य

रामयज्ञ पाण्डे व अन्य कुल 5 प्रार्थीगण श्रमिक द्वारा डिविजनल सेक्रेट्री, पी.आर.के.पी., कोटा।

—प्रार्थीगण श्रमिक

एवं

चीफ वर्क्स मैनेजर, वेस्टर्न रेल्वे, कोटा।

—अप्रार्थी नियोजक

उपस्थित

प्रार्थीगण श्रमिक की ओर से प्रतिनिधि : कोई उपस्थित नहीं

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री नरेश शर्मा

अधिनिर्णय दिनांक: 9 / 2 / 2017

::अधिनिर्णयः::

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 30/6/1997 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947(जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)घ) एवं उपधारा 2(क)के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:—

"Whether the action of the Chief Works Manager, workshop W.Rly, Kota in filing up the post of Chargemen grade 'A' and grade 'B' by transferring Shri SW Patil, S.K.Nigam, Omkaram, J.R. Bhatnagar, Shekh Like Admead Tej Singh, Virendra Dev and Durga Prasad who were working as chargemen Grade-II in the fitter trade ignoring the Promotion of workmen S/Shri Ram Yagya Pandey, Ramesh K., Ramniwas Saxena, K.T.Kuriakosh and K.B.L. Bhatnagar who were originally working as chargemen grade 'B' in the rivetting trade in fair and justified? If not what relief these concerned workmen are entitled to?"

2. निर्देश / विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्व उपरान्त पक्षकारों को सूचना / नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थीगण श्रमिक की ओर से प्रार्थी यूनियन के मण्डल मंत्री द्वारा क्लेम स्टेटमेन्ट न्यायाधिकरण के समक्ष प्रस्तुत कर व्यक्त किया गया है कि अप्रार्थी नियोजक द्वारा रेफेन्स अनुसूची में वर्णितानुसार क्लेम में दर्शाये गये रामयज्ञ पाण्डे वगैरह कुल 5 प्रार्थीगण श्रमिक/कर्मकारों को जो चार्जमेन ग्रेड-बी में रिवीटिंग ट्रेड में थे, को चार्जमेन ग्रेड-ए में फिटर ट्रेड में पदोन्नत नहीं कर अन्य श्रमिकगण एस.डबल्यू.पाटिल वगैरह जो चार्जमेन ग्रेड-गा थे, को स्थानान्तरित कर फिटर ट्रेड में पदोन्नत करने की कार्यवाही की गयी जिससे प्रार्थीगण श्रमिक रामयज्ञ पाण्डे वगैरह फिटर ट्रेड में पदोन्नति लाभ से वंचित रह गये जो उचित नहीं है। अतः इन पांचों प्रार्थीगण श्रमिक को भी उक्त फिटर ट्रेड में पदोन्नति का लाभ प्रदान किये जाने की प्रार्थना न्यायाधिकरण से की गयी है।

4. उपरोक्त क्लेम स्टेटमेन्ट का जवाब प्रस्तुत कर अप्रार्थी नियोजक की ओर से व्यक्त किया गया है कि प्रार्थीगण द्वारा जिन श्रमिकगण एस.डबल्यू.पाटिल वगैरह को फिटर ट्रेड में पदोन्नति दिये जाने का हवाला दिया गया है, उन श्रमिकगण को नियमानुसार वरिष्ठता के आधार पर वो लाभ प्रदान किया गया है तथा यदि प्रार्थीगण श्रमिक को किसी कर्मचारी की वरिष्ठता या अन्य विवरण में कोई आपत्ति थी तो उसके प्रकाशन के एक माह के अन्दर ही सम्बन्धित कार्यालय में आपत्ति प्रस्तुत करनी चाहिए थी। अतः क्लेम प्रार्थीगण श्रमिक निराधार होने से सव्य स्विस्त किये जाने की प्रार्थना न्यायाधिकरण से की गयी है।

5. साक्ष्य में प्रार्थीगण श्रमिक की ओर से प्रार्थी रामयज्ञ पाण्डे का शपथ-पत्र प्रस्तुत किया गया।

6. सर्वप्रथम यहाँ यह उल्लेखित किया जाना उचित होगा कि रेफेन्स अनुसूची में वर्णित रामयज्ञ पाण्डे वगैरह कुल 5 प्रार्थीगण श्रमिक में से प्रार्थी श्रमिक के.टी.कुर्झियाकोश की दौरान विचारण मृत्यु हो जाने से आदेशिका दि. 22/4/14 के अनुसार उसका मामला उपशमित हो जाने से अब उसके सम्बन्ध में आगे मामला विचारण योग्य नहीं रहा है।

7. यह प्रकरण गत कई पेशियों से प्रार्थी की जिरह हेतु नियत होता रहा है तथा आज भी प्रार्थी रामयज्ञ पाण्डे अपनी जिरह हेतु उपस्थित नहीं हुआ है। अतः विधिनुसार अब और समय दिया जाना उचित नहीं समझते हुए प्रार्थी की जिरह बन्द की गयी और उसका शपथ-पत्र साक्ष्य में ग्राह्य नहीं है। अप्रार्थी पक्ष की ओर से भी उक्त स्थिति में कोई साक्ष्य प्रस्तुत नहीं करना प्रकट करते हुए अपनी साक्ष्य समाप्त की गयी।

8. मामले में गत कई पेशियों से ना तो प्रार्थीगण उपस्थित हो रहे हैं एवं ना ही कोई अधिकृत प्रतिनिधि ही उपस्थित हो रहे हैं एवं ना ही आज कोई उपस्थित है, ऐसी स्थिति में प्रकरण में अप्रार्थी पक्ष की बहस सुनी गयी। बहस अन्तिम के दौरान न्यायाधिकरण के समक्ष यह तथ्य सामने आया है कि सम्प्रेषित निर्देश / रेफेन्स में, अप्रार्थीगण नियोजक द्वारा रेफेन्स अनुसूची में वर्णितानुसार रामयज्ञ पाण्डे वगैरह कुल 5 प्रार्थीगण श्रमिक/कर्मकारों को जो चार्जमेन ग्रेड-बी में रिवीटिंग ट्रेड में थे, को चार्जमेन ग्रेड-ए में फिटर ट्रेड में पदोन्नत नहीं कर अन्य श्रमिकगण एस.डबल्यू.पाटिल वगैरह जो चार्जमेन ग्रेड-गा थे, को स्थानान्तरित कर फिटर ट्रेड में पदोन्नत करने की कार्यवाही की गयी जिससे प्रार्थीगण श्रमिक रामयज्ञ पाण्डे वगैरह फिटर ट्रेड में पदोन्नति लाभ से वंचित रह गये, उस किसी पदोन्नति आदेश तिथि का कोई उल्लेख नहीं है। अतः यह स्थिति स्पष्ट नहीं है कि यह न्यायाधिकरण अप्रार्थीगण श्रमिक को फिटर ट्रेड में पदोन्नत नहीं किये जाने की कौनसी तिथि मानकर अप्रार्थीगण के कृत्य की उचितता एवं वैधता का विनिश्चय करेगा? इस सम्बन्ध में माननीय राज. उच्च न्यायालय द्वारा पारित न्यायदृष्टांत "2003 डबल्यू.एल.सी.(राज.) यू.सी. पृष्ठ 424—महावीर कण्डकटर बनाम नन्दकिशोर" में यह प्रतिपादित किया गया है कि सेवाओं के पर्यवसान की तिथि का रेफेन्स में उल्लेख नहीं होने से श्रम न्यायालय किसी कर्मकार के कथनानुसार पर्यवसान की तिथि को स्वीकार कर निर्देश / रेफेन्स की शर्तों में सुधार, संशोधन या उपान्तरण करने में सक्षम नहीं है एवं ना ही न्यायालय को पक्षकारों की सहमति से ऐसी अधिकारिता प्राप्त होती है। अतः माननीय उच्च न्यायालय द्वारा निर्देश / रेफेन्स में कर्मकार की सेवा पर्यवसान की तिथि वर्णित नहीं होने से अधिनिर्णय को अपास्त कर दिया गया। इस उक्त न्यायनिर्णय में प्रतिपादित सिद्धांत के अनुसार जहाँ निर्देश / रेफेन्स में सेवा से हटाने, मुक्त करने या पृथक करने की तिथि का अंकन नहीं है तो श्रम न्यायालय को उस तिथि को सही करने या संशोधन करने की अधिकारिता पक्षकारों द्वारा ऐसी तिथि सुझावित किये जाने पर भी प्राप्त नहीं हो जाती है। अर्थात् यदि निर्देश में सेवा से मुक्त, पृथक या हटाने की तिथि का कोई अंकन नहीं है व दोनों ही पक्षकार ऐसी तिथि यदि बता भी देते हों तो भी श्रम न्यायालय को उस बतायी गयी तिथि को मानकर उसके आधार पर निर्देश / रेफेन्स उत्तरित करने का अधिकार प्राप्त नहीं हो जाता है।

इस न्यायनिर्णय के पेरा सं.11 में माननीय उच्चतम न्यायालय द्वारा "मदनपालसिंह बनाम उत्तरप्रदेश राज्य व अन्य—एआईआर 2000 एस.सी. 537" के निर्णय को विवेचित किया गया है तथा अन्त में यह निष्कर्ष निकाला गया कि श्रम न्यायालय निर्देश में वर्णित बिन्दुओं तक ही सीमित क्षेत्राधिकार रखता है एवं उसको पक्षकारों के नामों में निर्देश से पेरे जाकर संशोधन आदि का अधिकार प्राप्त नहीं होता। यदि नामों या तिथि आदि में कोई परिवर्तन या अंकन कराना है तो पक्षकारों को समुचित सरकार के समक्ष इस बाबत पक्ष रखकर उसमें संशोधन कराना होगा, परन्तु श्रम न्यायालय को ऐसा संशोधन करने की अधिकारिता नहीं है। अतः इसी निर्णय को आधार मानते हुए माननीय उच्च न्यायालय द्वारा उक्त मामले में श्रम न्यायालय द्वारा पारित अधिनिर्णय को क्षेत्राधिकार के अभाव का मानते हुए अपास्त कर दिया गया।

9. अब यह न्यायाधिकरण हस्तगत निर्देश/रेफेन्स में अप्रार्थीगण नियोजक द्वारा प्रार्थीगण श्रमिक को फिटर ग्रेड में पदोन्नत नहीं किये जाने की कौनसी आदेश तिथि मानकर अप्रार्थीगण के कृत्य की उचितता एवं वैधता का विनिश्चय करेगा तथा क्या यह न्यायाधिकरण पक्षकारों द्वारा सुझायी गयी तिथि मानकर प्रकरण का गुणावगुण पर विनिश्चय कर सकता है अथवा निर्देश/रेफेन्स में संशोधन करने की अधिकारिता रखता है? इस सम्बन्ध में माननीय राजस्थान उच्च न्यायालय द्वारा पारित उक्त न्यायदृष्टांत "2003 डबल्यू.एल.सी.(राज.) यू.सी. पृष्ठ 424—महावीर कण्डकटर बनाम नन्दकिशोर" के पेरा संख्या 12 का उल्लेख किया जाना न्यायसंगत है जिसमें माननीय उच्च न्यायालय द्वारा रेफेन्स के निबन्धन या सेवा समाप्ति तिथि में संशोधन आदि बाबत निम्न स्थिति प्रकट की गयी है:—

"Thus, in view of the above, I reach the inescapable conclusion that the Labour Court has no competence to correct/modify/amend/alter the terms of the reference or mention the date of termination etc., or proceed with the reference and accepting the date of termination as suggested by the workman and in case it does so, the award becomes nullity, being without jurisdiction, based on the bad reference."

10. अतः माननीय राज. उच्च न्यायालय द्वारा पारित उपरोक्त न्यायदृष्टांत के प्रकाश में हस्तगत मामले में यह न्यायाधिकरण पक्षकारों द्वारा सुझायी गयी तिथि/नाम आदि को संशोधित नाम मानकर प्रकरण को गुणावगुण पर निस्तारित किये जाने की अधिकारिता नहीं रखता है। इस प्रकार माननीय उच्चतम एवं माननीय उच्च न्यायालय द्वारा ऊपर विवेचित किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों के अनुसार हस्तगत प्रकरण में इस न्यायाधिकरण को ऐसे पक्षकारों का संशोधन प्रस्ताव स्वीकार किये जाने की अधिकारिता नहीं होने से इस न्यायाधिकरण की राय में यह न्यायाधिकरण यदि कोई अधिनिर्णय पारित भी करता है तो वह क्षेत्राधिकार के अभाव का होकर शून्य होगा। इन न्यायनिर्णयों के खण्डन में या अन्य कोई न्यायनिर्णय ऐसा पेश भी नहीं किया गया जिसमें कि ऊपर वर्णित स्थिति होने के बावजूद भी न्यायाधिकरण को निर्देश अधिनिर्णित करने का अधिकार प्राप्त हो। अतः कुल मिलाकर स्थिति उक्त न्यायनिर्णयों के ही अभी तक प्रभावशील होने की पायी जाती है। माननीय उच्च न्यायालय एवं माननीय उच्चतम न्यायालय द्वारा पारित उक्त न्यायनिर्णयों में प्रतिपादित सिद्धांतों से यह न्यायाधिकरण आबद्ध है। अतः ऐसी परिस्थिति में सम्पूर्ण विवेचन के उपरान्त इस न्यायाधिकरण की राय में इतना ही कहना पर्याप्त है कि हस्तगत निर्देश/रेफेन्स में अप्रार्थीगण नियोजक द्वारा प्रार्थीगण श्रमिक को फिटर ग्रेड में पदोन्नत नहीं करने के किसी आदेश तिथि का कोई अंकन नहीं होने से यह न्यायाधिकरण ऐसे निर्देश में कोई संशोधन कर अधिनिर्णय पारित करने की अधिकारिता नहीं रखता है एवं यदि पक्षकार सक्षम सरकार से इस बाबत निर्देश/रेफेन्स में संशोधन कराकर न्यायाधिकरण में पेश करते हैं तो न्यायाधिकरण ऐसा संशोधन प्राप्त होने पर प्रकरण में विधि अनुसार कार्यवाही कर सकेगा, परन्तु इस प्रक्रम पर फिलहाल यह मामला इस न्यायाधिकरण के क्षेत्राधिकार के अभाव का पाया जाता है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दिनांक 30/6/1997 के जरिये सम्प्रेषित निर्देश/रेफेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि माननीय राजस्थान उच्च न्यायालय द्वारा पारित उक्त न्यायदृष्टांत "2003 डबल्यू.एल.सी.(राज.) यू.सी. पृष्ठ 424—महावीर कण्डकटर बनाम नन्दकिशोर" में प्रतिपादित सिद्धांत के अनुसरण में हस्तगत निर्देश/रेफेन्स में वर्णित अप्रार्थीगण नियोजक द्वारा प्रार्थीगण श्रमिक में से श्रमिक के टी. कुर्सियाकोश की मृत्यु हो जाने के कारण उसका मामला उपशमित हो जाने से उसके अलावा शेष रहे 4 प्रार्थीगण श्रमिक रामयज्ञ पाण्डे वगैरह को फिटर ट्रेड में पदोन्नति नहीं दिये जाने के किसी आदेश तिथि का कोई अंकन नहीं होने से व इस न्यायाधिकरण को पक्षकारों द्वारा सुझायी गयी तिथि को स्वीकार किये जाने की अधिकारिता नहीं होने से हस्तगत निर्देश/रेफेन्स में अधिनिर्णय पारित किया जाना शून्य एवं क्षेत्राधिकार के अभाव का होगा। पक्षकार यदि सक्षम सरकार से उक्त तिथि बाबत निर्देश/रेफेन्स में संशोधन/अंकन कराकर न्यायाधिकरण के समक्ष पेश करेंगे तो न्यायाधिकरण गुणावगुण के आधार पर विधि अनुसार आगे प्रकरण के निस्तारण की कार्यवाही कर सकेगा।

जगमोहन शर्मा, न्यायाधीश

नई दिल्ली, 19 जून, 2017

का.आ. 1520.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हाडौती क्षेत्रीय ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 11/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.06.2017 को प्राप्त हुआ था।

[सं. एल-12011/8/99-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th June, 2017

S.O. 1520.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Kota as shown in the Annexure, in the industrial dispute between the management of Hadoti Kshetriya Gramin Bank and their workmen, received by the Central Government on 19.06.2017.

[No. L-12011/8/99-IR (B-I)]

B. S. BISHT, Section Officer

अनुबंध**न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)**

पीठासीन अधिकारी – श्री जगमोहन शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ.न्या.(केन्द्रीय)-11/1999

दिनांक स्थापित : 10/6/99

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश
क्रं. एल-12011/8/99-आईआर(बी-१)दि. 17/5/1999

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क) औद्योगिक विवाद अधिनियम, 1947**मध्य**

गणेशलाल द्वारा महासचिव, हाड़ौती क्षेत्रीय ग्रामीण बैंक कर्मचारी यूनियन द्वारा
राज. बैंक एम्प्लोईज यूनियन ऑफिस, बैंक आफ बड़ौदा के सामने, रामपुरा, कोटा।

—प्रार्थी श्रमिक

एवं

चेयरमेन, हाड़ौती क्षेत्रीय ग्रामीण बैंक, हेड ऑफिस, 9 ए-बी, झालावाड रोड, कोटा।

—प्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि	:	श्री पुरुषोत्तम दाधीच
अप्रार्थी नियोजक की ओर से प्रतिनिधि	:	श्री एम.सी.गुप्ता
अधिनिर्णय दिनांक: 1/2/2017		

अधिनिर्णय:

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 17/5/1999 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त “अधिनियम” से सम्बोधित किया जावेगा) की धारा 10(1)(घ) एवं उपधारा 2(क) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:—

“Whether the contention of the Hadoti Kshetriya Gramin Bank Karmachari Union that action of the management of Hadoti Kshetriya Gramin Bank in imposing a penalty of stoppage of the increment for a period of 3 months without cumulative effect upon Shri Ganesh Lal, Clerk was illegal, is justified? If so, to what relief the said workman is entitled?”

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थी श्रमिक की ओर से प्रार्थी यूनियन के महासचिव द्वारा क्लेम स्टेटमेन्ट न्यायाधिकरण के समक्ष प्रस्तुत कर व्यक्त किया गया है कि प्रार्थी, अप्रार्थी बैंक में लिपिक के पद पर नियोजित है। प्रार्थी के विरुद्ध लड़ाई-झगड़े के मामले में दायर प्रथम सूचना रिपोर्ट के तहत दि.1/6/94 से 7/6/94 तक गिरफ्तारी के आधार पर अप्रार्थी द्वारा पत्र दि.26/7/94 के द्वारा प्रार्थी को निलम्बित कर दिया गया था और तत्पश्चात दि.21/1/95 को आरोप-पत्र दिया गया जिसका जवाब प्रार्थी ने दे दिया, किन्तु उस पर कोई ध्यान नहीं दिया। अप्रार्थी द्वारा आरोपित आरोप के सम्बन्ध में कोई विभागीय जॉच नहीं की गयी व ना ही बचाव का कोई अवसर प्रदान किया गया। प्रार्थी द्वारा घटनाक्रम में आर्थिक परेशानी समझकर दि. 30/6/95 के पत्र द्वारा क्षमायाचना करने को ही प्रार्थी के विरुद्ध आरोपित आरोप सिद्ध मानकर अन्तिम आदेश दि.22/1/96 के द्वारा एक वार्षिक वेतन वृद्धि 3 माह की अवधि के लिए असंचयी प्रभाव से रोके जाने के

दण्ड से दण्डित किया गया जो उचित नहीं है। अतः उक्त दण्डादेश निरस्त करते हुए समरूप लाभ दिलाये जाने की प्रार्थना न्यायाधिकरण से की गयी है।

4. उपरोक्त कलेम स्टेटमेन्ट का जवाब प्रस्तुत कर अप्रार्थी नियोजक की ओर से व्यक्त किया गया है कि प्रार्थी के विरुद्ध दायर फौजदारी मामले में गिरफ्तारी के सम्बन्ध में दिये गये ज्ञापन/आरोप—पत्र दि.21/1/95 के आधार पर उसे निलम्बित किया गया था जिसका नियमानुसार निर्धारित भूता अदा किया गया था। स्वयं प्रार्थी द्वारा आरोपित आरोप की स्वीकारार्थित किये जाने से प्रार्थी द्वारा किया गया कृत्य अप्रार्थी बैंक की प्रतिष्ठा को ऑच पहुंचाने वाला होने के कारण अन्तिम आदेश दि.22/1/96 के द्वारा प्रार्थी की एक वार्षिक वेतन वृद्धि 3 माह की अवधि के लिए असंचयी प्रभाव से रोके जाने का दिया गया दण्डादेश उचित है। अन्त में कलेम प्रार्थी निराधार होने से सव्य समरूप लाभ दिलाये जाने की प्रार्थना की गयी है।

5. साक्ष्य में स्वयं प्रार्थी श्रमिक गणेशलाल व अप्रार्थी पक्ष की ओर से ललित मल्हौत्रा, सीनियर मैनेजर के शपथ—पत्र प्रस्तुत हुए, जिनसे दोनों पक्षों के प्रतिनिधिगण द्वारा एक—दूसरे पक्ष के शपथ—पत्रों पर जिरह की गयी। पक्षकारों की ओर से प्रलेखीय साक्ष्य भी प्रस्तुत की गयी।

6. पत्रावली अप्रार्थी बैंक की ओर से संशोधित जवाब पेश किये जाने के प्रस्तुत प्रार्थना—पत्र दि.21/10/83 की बहस हेतु नियत थी तथा इस बिन्दु पर आज बहस सुनने के दौरान ही न्यायाधिकरण के समक्ष यह तथ्य जानकारी में आया है कि सम्प्रेषित निर्देश/रेफेन्स में अप्रार्थी नियोजक द्वारा प्रार्थी श्रमिक की एक वार्षिक वेतन वृद्धि 3 माह की अवधि के लिए असंचयी प्रभाव से रोके जाने के दण्ड से दण्डित किये जाने के किसी वर्ष व आदेश तिथि का कोई उल्लेख नहीं है। इस सम्बन्ध में उभयपक्ष को स्थिति स्पष्ट करने हेतु कहा गया, किन्तु वे इस सम्बन्ध में कुछ भी स्पष्ट करने में असमर्थ रहे। अतः यह स्थिति स्पष्ट नहीं है कि यह न्यायाधिकरण प्रार्थी श्रमिक की एक वार्षिक वेतन वृद्धि 3 माह की अवधि के लिए असंचयी प्रभाव से रोके जाने के दण्ड से दण्डित किये जाने का कौनसा वर्ष व आदेश तिथि मानकर अप्रार्थी के कृत्य की उचितता एवं वैधता का विनिश्चय करेगा? इस सम्बन्ध में माननीय राज. उच्च न्यायालय द्वारा पारित न्यायदृष्टांत “2003 डब्ल्यू.एल.सी.(राज.) यू.सी. पृष्ठ 424—महावीर कण्डकटर बनाम नन्दकिशोर” में यह प्रतिपादित किया गया है कि सेवाओं के पर्यवसान की तिथि का रेफेन्स में उल्लेख नहीं होने से श्रम न्यायालय किसी कर्मकार के कथनानुसार पर्यवसान की तिथि को स्वीकार कर निर्देश/रेफेन्स की शर्तों में सुधार, संशोधन या उपान्तरण करने में सक्षम नहीं है एवं ना ही न्यायालय को पक्षकारों की सहमति से ऐसी अधिकारिता प्राप्त होती है। अतः माननीय उच्च न्यायालय द्वारा निर्देश/रेफेन्स में कर्मकार की सेवा पर्यवसान की तिथि वर्णित नहीं होने से अधिनिर्णय को अपास्त कर दिया गया। इस उक्त न्यायनिर्णय में प्रतिपादित सिद्धांत के अनुसार जहाँ निर्देश/रेफेन्स में सेवा से हटाने, मुक्त करने या पृथक करने की तिथि का अंकन नहीं है तो श्रम न्यायालय को उस तिथि को सही करने या संशोधन करने की अधिकारिता पक्षकारों द्वारा ऐसी तिथि सुझावित किये जाने पर भी प्राप्त नहीं हो जाती है। अर्थात् यदि निर्देश में सेवा से मुक्ति, पृथक या हटाने की तिथि का कोई अंकन नहीं है व दोनों ही पक्षकार ऐसी तिथि यदि यदि बता भी देते हों तो भी श्रम न्यायालय को उस बतायी गयी तिथि को मानकर उसके आधार पर निर्देश/रेफेन्स उत्तरित करने का अधिकार प्राप्त नहीं हो जाता है। इस न्यायनिर्णय के पेरा सं.11 में माननीय उच्चतम न्यायालय द्वारा “मदनपालसिंह बनाम उत्तरप्रदेश राज्य व अन्य—एआईआर 2000 एस.सी. 537” के निर्णय को विवेचित किया गया है तथा अन्त में यह निर्षक्षण निकाला गया कि श्रम न्यायालय निर्देश में वर्णित बिन्दुओं तक ही सीमित क्षेत्राधिकार रखता है एवं उसको पक्षकारों के नामों में निर्देश से पेरे जाकर संशोधन आदि का अधिकार प्राप्त नहीं होता। यदि नामों या तिथि आदि में कोई परिवर्तन या अंकन कराना है तो पक्षकारों को समुचित सरकार के समक्ष इस बाबत पक्ष रखकर उसमें संशोधन कराना होगा, परन्तु श्रम न्यायालय को ऐसा संशोधन करने की अधिकारिता नहीं है। अतः इसी निर्णय को आधार मानते हुए माननीय उच्च न्यायालय द्वारा उक्त मामले में श्रम न्यायालय द्वारा पारित अधिनिर्णय को क्षेत्राधिकार के अभाव का मानते हुए अपास्त कर दिया गया।

7. अब यह न्यायाधिकरण हस्तगत निर्देश/रेफेन्स में अप्रार्थी नियोजक द्वारा प्रार्थी श्रमिक की एक वार्षिक वेतन वृद्धि 3 माह की अवधि के लिए असंचयी प्रभाव से रोके जाने के दण्ड से दण्डित किये जाने का कौनसा वर्ष व आदेश तिथि मानकर अप्रार्थी के उक्त कृत्य की उचितता एवं वैधता का विनिश्चय करेगा तथा क्या यह न्यायाधिकरण पक्षकारों द्वारा सुझायी गयी तिथि मानकर प्रकरण का गुणावगुण पर विनिश्चय कर सकता है अथवा निर्देश/रेफेन्स में संशोधन करने की अधिकारिता रखता है? इस सम्बन्ध में माननीय राजस्थान उच्च न्यायालय द्वारा पारित उक्त न्यायदृष्टांत “2003 डब्ल्यू.एल.सी.(राज.) यू.सी. पृष्ठ 424—महावीर कण्डकटर बनाम नन्दकिशोर” के पेरा संख्या 12 का उल्लेख किया जाना न्यायसंगत है जिसमें माननीय उच्च न्यायालय द्वारा रेफेन्स के निवन्धन या सेवा समाप्ति तिथि में संशोधन आदि बाबत निम्न स्थिति प्रकट की गयी है:-

"Thus, in view of the above, I reach the inescapable conclusion that the Labour Court has no competence to correct/modify/amend/alter the terms of the reference or mention the date of termination etc., or proceed with the reference and accepting the date of termination as suggested by the workman and in case it does so, the award becomes nullity, being without jurisdiction, based on the bad reference."

8. अतः माननीय राज. उच्च न्यायालय द्वारा पारित उपरोक्त न्यायदृष्टांत के प्रकाश में हस्तगत मामले में यह न्यायाधिकरण पक्षकारों द्वारा सुझायी गयी तिथि/नाम आदि को संशोधित नाम मानकर प्रकरण को गुणावगुण पर निस्तारित किये जाने की अधिकारिता नहीं रखता है। इस प्रकार माननीय उच्चतम एवं माननीय उच्च न्यायालय द्वारा ऊपर विवेचित किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों के अनुसार हस्तगत प्रकरण में इस न्यायाधिकरण को ऐसे पक्षकारों का संशोधन प्रस्ताव स्वीकार किये जाने की अधिकारिता नहीं होने से इस न्यायाधिकरण की राय में यह न्यायाधिकरण यदि कोई अधिनिर्णय पारित भी करता है तो वह क्षेत्राधिकार के अभाव का होकर शून्य होगा।

इन न्यायनिर्णयों के खण्डन में या अन्य कोई न्यायनिर्णय ऐसा पेश भी नहीं किया गया जिसमें कि ऊपर वर्णित स्थिति होने के बावजूद भी न्यायाधिकरण को निर्देश अधिनिर्णित करने का अधिकार प्राप्त हो। अतः कुल मिलाकर स्थिति उक्त न्यायनिर्णयों के ही अभी तक प्रभावशील होने की पायी जाती है। माननीय उच्च न्यायालय एवं माननीय उच्चतम न्यायालय द्वारा पारित उक्त न्यायनिर्णयों में प्रतिपादित सिद्धांतों से यह न्यायाधिकरण आबद्ध है। अतः ऐसी परिस्थिति में सम्पूर्ण विवेचन के उपरान्त इस न्यायाधिकरण की राय में इतना ही कहना पर्याप्त है कि हस्तगत निर्देश/रेफेन्स में अप्रार्थी नियोजक द्वारा प्रार्थी श्रमिक की एक वार्षिक वेतन वृद्धि 3 माह की अवधि के लिए असंचयी प्रभाव से रोके जाने के दण्ड से दण्डित किये जाने के किसी वर्ष व आदेश तिथि का अंकन नहीं होने से यह न्यायाधिकरण ऐसे निर्देश/रेफेन्स में संशोधन कराकर न्यायाधिकरण में पेश करते हैं तो न्यायाधिकरण ऐसा संशोधन प्राप्त होने पर प्रकरण में विधि अनुसार कार्यवाही कर सकेगा, परन्तु इस प्रक्रम पर फिलहाल यह मामला इस न्यायाधिकरण के क्षेत्राधिकार के अभाव का पाया जाता है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासारित आदेश दिनांक 17/5/1999 के जरिये सम्प्रेषित निर्देश/रेफेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है माननीय राजस्थान उच्च न्यायालय द्वारा पारित उक्त न्यायदृष्टांत “2003 डबल्यू.एल.सी.(राज.) यू.सी. पृष्ठ 424—महावीर कण्डकटर बनाम नन्दकिशोर” में प्रतिपादित सिद्धांत के अनुसरण में हस्तगत निर्देश/रेफेन्स में वर्णित अप्रार्थी नियोजक द्वारा प्रार्थी श्रमिक गणेशलाल की एक वार्षिक वेतन वृद्धि 3 माह की अवधि के लिए असंचयी प्रभाव से रोके जाने के दण्ड से दण्डित किये जाने के किसी वर्ष व आदेश तिथि का कोई अंकन नहीं होने से व इस न्यायाधिकरण को पक्षकारों द्वारा सुझायी गयी तिथि को स्वीकार किये जाने की अधिकारिता नहीं होने से हस्तगत निर्देश/रेफेन्स में अधिनिर्णय पारित किया जाना शून्य एवं क्षेत्राधिकार के अभाव का होगा। पक्षकार यदि सक्षम सरकार से उक्त तिथि बाबत निर्देश/रेफेन्स में संशोधन/अंकन कराकर न्यायाधिकरण के समक्ष पेश करेंगे तो न्यायाधिकरण गुणावगुण के आधार पर विधि अनुसार आगे प्रकरण के निस्तारण की कार्यवाही कर सकेगा।

जगमोहन शर्मा, न्यायाधीश

नई दिल्ली, 19 जून, 2017

का.आ. 1521.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 2/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.06.2017 को प्राप्त हुआ था।

[सं. एल-41012/89/93-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th June, 2017

S.O. 1521.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/1995) of the Central Government Industrial Tribunal-cum-Labour Court, Kota as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 19.06.2017.

[No. L-41012/89/93-IR (B-I)]

B. S. BISHT, Section Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी – श्री जगमोहन शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ.न्या.(केन्द्रीय)-2 / 1995

दिनांक स्थापित : 13 / 2 / 95

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश

कं. एल-41012 / 89 / 93-आईआर(बी) दिनांक 9 / 2 / 95

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क) औद्योगिक विवाद अधिनियम, 1947

मध्य

अब्दुल गनी झाईवर द्वारा दी डिविजनल सेकेट्री, पी.आर.के.पी.

स्टेट बैंक आफ बीकानेर एण्ड जयपुर के सामने, स्टेशन रोड, कोटा।

—प्रार्थी श्रमिक

एवं

मण्डल रेल प्रबन्धक, पश्चिम रेलवे, कोटा।

—अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : कोई उपस्थित नहीं।

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री श्याम गुप्ता

अधिनिर्णय दिनांक: 11/1/2017

:अधिनिर्णयः

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 9/2/1995 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947(जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)घ) एवं उपधारा 2(क) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

"Whether the action of the Divisional Manager W.Rly., Kota is not giving promotion of Sh. Abdul Gani, Driver Gr.III to the post of Driver Grade II in the pay scale pf Rs.1200/1800/alongwith his juniors and also not calling for trade test for the post of Driver Gr.I alongwith jouniors is legal & justified? If not, what relief the concerned workman is entitled to and from what date?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्व उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थी श्रमिक की ओर से प्रार्थी यूनियन के मण्डल मंत्री द्वारा क्लेम स्टेटमेन्ट न्यायाधिकरण के समक्ष प्रस्तुत कर व्यक्त किया गया है कि अप्रार्थी नियोजक मण्डल रेल प्रबन्धक, पश्चिम रेल्वे, कोटा द्वारा प्रार्थी श्रमिक/कर्मकार अब्दुल गनी को दि.21/9/85 को आकस्मिक मजदूर की हैसियत से वेतनमान 750—940(आर.पी.) में रेल विद्युतिकरण, कोटा में भर्ती किया गया था व तत्पश्चात दि.16/9/86 से इसी वेतनमान में अस्थाई दर्जा प्रदान किया गया था तथा उसे जीप/ट्रक ड्राईवर ग्रेड-3 वेतनमान 950—1500(आर.पी.) में पदोन्नति दी गयी थी और आदेश दि.27/6/87 के द्वारा मुख्य कर्षण फोरमेन, शामगढ़ के अधीन पदस्थापित किया गया था। प्रार्थी को ड्राईवर ग्रेड-3 के पद जिसका वेतनमान 1200—1800(आर.पी.) है, के ट्रेड टेस्ट के लिए नहीं बुलाया गया, जबकि उससे कनिष्ठ कर्मचारियों को इस हेतु बुलाया गया और पदोन्नत कर पदस्थापित कर दिया गया, जबकि प्रार्थी को इस पदोन्नति से वंचित रखा गया। प्रारम्भ में श्रमिक गुलाब सिंह, अब्दुल समद, रशीद व घनश्याम सिंह अलग—अलग पदों पर कार्य करते थे, उनको ड्राईवर ग्रेड-3 वेतनमान 950—1500 के ट्रेड टेस्ट के लिए बुलाया गया था और उन्हें ट्रेड टेस्ट पास करने के उपरान्त उक्त ग्रेड में आदेश दि.12/9/88 के द्वारा नियमित किया। उपरोक्त तीनों कर्मकार प्रार्थी कर्मकार से कनिष्ठ हैं क्योंकि प्रार्थी श्रमिक को उक्त ग्रेड में दि.4/1/88 को ही नियमित कर दिया गया था। उक्त तीनों कनिष्ठ कर्मकारों को ड्राईवर ग्रेड-2 के ट्रेड टेस्ट दि.11/9/90 के लिए बुलाकर पास करने उपरान्त ड्राईवर ग्रेड-2 वेतनमान 1200—1800 में पदस्थापित कर दिया गया, जबकि प्रार्थी को इनसे वरिष्ठ होते हुए भी उक्त उच्च पद के टेस्ट के लिए नहीं बुलाकर पदोन्नति से वंचित किया गया और आगे भी वरिष्ठता के आधार पर ड्राईवर ग्रेड-1 वेतनमान 1320—2040 की पदोन्नति हेतु नहीं बुलाया गया। इस प्रकार अप्रार्थी नियोजक की उक्त कार्यवाही उचित नहीं है, अतः जिस तिथि से उससे कनिष्ठ कर्मकारों को ड्राईवर ग्रेड-2 वेतनमान 1200—1800 में पदोन्नत किया गया है उस तिथि से पदोन्नत कर पदोन्नति लाभ दिलवाये जाने व वरीयता के आधार पर ड्राईवर ग्रेड-1 के वेतनमान 1320—2040 में पदोन्नति कर पदोन्नति लाभ दिलवाये जाने की प्रार्थना इस क्लेम स्टेटमेन्ट के माध्यम से की गयी है।

4. उपरोक्त क्लेम स्टेटमेन्ट का जवाब प्रस्तुत कर अप्रार्थी नियोजक की ओर से प्रार्थी अब्दुल गनी का दिनांक 21/9/85 को रेल विद्युतिकरण(आर.ई.) कोटा में वेतनमान 750—940 में आकस्मिक मजदूर की हैसियत से नियुक्त होना व उसे कोटा में ही अस्थायी दर्जा प्रदान किया जाना तथा दि.27/6/87 को टी.एस.ड्राईवर ग्रेड-3 का दर्जा प्राप्त करने का कथन किया गया है। प्रार्थी जिस वक्त मण्डल कार्यालय के कर्षण विभाग में जीप/ट्रक ड्राईवर ग्रेड-2 वेतनमान 1200—1800 में व्यावसायिक परीक्षा हुई, उस समय इस मण्डल में कार्यरत नहीं था, इस कारण उसे इस व्यावसायिक परीक्षा हेतु बुलाये जाने का प्रश्न ही नहीं उठता। प्रार्थी की जीप/ट्रक ड्राईवर ग्रेड-3 वेतनमान 950—1500 की वरीयता सूची दि.29/11/91 में दर्शायी गयी तिथि 5/1/88 खल्लासी के पद पर नियमित नियुक्ति की तिथि है, ना कि जीप/ट्रक ड्राईवर ग्रेड-3 में नियमित नियुक्ति की तिथि। प्रार्थी की पदोन्नति ड्राईवर ग्रेड-3 में आदेश दि.1/8/89 के तहत हुई है, जबकि अन्य कर्मकार गुलाबसिंह, अब्दुल समद, रशीद व घनश्याम सिंह ने ड्राईवर ग्रेड-3 वेतनमान 950—1500 की व्यावसायिक परीक्षा उत्तीर्ण करने पर उन्हें क्रमशः 27/9/88, 31/7/88, 24/9/88 व 19/9/88 को पदोन्नति दी गयी है। प्रार्थी गनी को 5/1/88 से खल्लासी के वेतनमान 750—940 के पद पर नियमित किया गया, ना कि ड्राईवर ग्रेड-3 के वेतनमान 950—1500 के पद पर, जबकि अन्य उक्त सभी कर्मकारों को दि.12/9/88 से ड्राईवर ग्रेड-3 के वेतनमान 950—1500 में नियमित किया गया था, अतः उक्त सभी कर्मकार प्रार्थी श्रमिक से वरिष्ठ हैं। इस प्रकार प्रार्थी श्रमिक उक्त व्यक्तियों के अनुरूप वांछित लाभ प्राप्त करने का अधिकारी नहीं है और उसका क्लेम सव्यय निरस्त किये जाने की प्रार्थना की गयी है।

5. साक्ष्य में स्वयं प्रार्थी श्रमिक अब्दुल गनी व अप्रार्थी पक्ष की ओर से देवेन्द्र कुमार, मुख्य लिपिक के शपथ—पत्र प्रस्तुत हुए, जिनसे दोनों पक्षों के प्रतिनिधिगण द्वारा एक—दूसरे पक्ष के शपथ—पत्रों पर जिरह की गयी। प्रार्थी पक्ष की ओर से प्रलेखीय साक्ष्य भी प्रस्तुत की गयी है।

6. प्रकरण में प्रार्थी अथवा प्रार्थी यूनियन की ओर से न्यायाधिकरण में कोई उपरिथित नहीं आने पर अप्रार्थी के विद्वान प्रतिनिधि की बहस अन्तिम सुनी गयी। दौरान बहस न्यायाधिकरण के समक्ष यह तथ्य जानकारी में आया है कि सम्प्रेषित निर्देश/रेफेन्स में अप्रार्थी नियोजक द्वारा प्रार्थी को झाईवर ग्रेड-3 से झाईवर ग्रेड-2 की वेतन शृंखला 1200—1800 में कौनसी तिथि से पदोन्नत नहीं किया गया एवं उससे कनिष्ठ श्रमिकों के साथ झाईवर ग्रेड-1 के ट्रेड टेस्ट के लिए उसे कौनसी तिथि से नहीं बुलाया गया, इन तिथियों का कोई उल्लेख नहीं है। अतः इन परिस्थितियों में यह न्यायाधिकरण अप्रार्थी द्वारा प्रार्थी को झाईवर ग्रेड-3 से झाईवर ग्रेड-2 की वेतन शृंखला 1200—1800 में कौनसी तिथि से पदोन्नत नहीं करने एवं उससे कनिष्ठ श्रमिकों के साथ झाईवर ग्रेड-1 के ट्रेड टेस्ट के लिए उसे कौनसी तिथि को नहीं बुलाने की तिथि मानकर अप्रार्थी के कृत्य की उचितता एवं वैधता का विनिश्चय करेगा? इस सम्बन्ध में माननीय राज. उच्च न्यायालय द्वारा पारित न्यायदृष्टांत “2003 डबल्यू.एल.सी.(राज.)” यू.सी. पृष्ठ 424—महावीर कण्डकटर बनाम नन्दकिशोर” में यह प्रतिपादित किया गया है कि सेवाओं के पर्यवसान की तिथि का रेफेन्स में उल्लेख नहीं होने से श्रम न्यायालय किसी कर्मकार के कथनानुसार पर्यवसान की तिथि को स्वीकार कर निर्देश/रेफेन्स की शर्तों में सुधार, संशोधन या उपान्तरण करने में सक्षम नहीं है एवं ना ही न्यायालय को पक्षकारों की सहमति से ऐसी अधिकारिता प्राप्त होती है। अतः माननीय उच्च न्यायालय द्वारा निर्देश/रेफेन्स में कर्मकार की सेवा पर्यवसान की तिथि वर्णित नहीं होने से अधिनिर्णय को अपास्त कर दिया गया। इस उक्त न्यायनिर्णय में प्रतिपादित सिद्धांत के अनुसार जहाँ निर्देश/रेफेन्स में सेवा से हटाने, मुक्त करने या पृथक करने की तिथि का अंकन नहीं है तो श्रम न्यायालय को उस तिथि को सही करने या संशोधन करने की अधिकारिता पक्षकारों द्वारा ऐसी तिथि सुझावित किये जाने पर भी प्राप्त नहीं हो जाती है। अर्थात् यदि निर्देश में सेवा से मुक्ति, पृथक या हटाने की तिथि का कोई अंकन नहीं है व दोनों ही पक्षकार ऐसी तिथि यदि बता भी देते हों तो भी श्रम न्यायालय को उस बतायी गयी तिथि को मानकर उसके आधार पर निर्देश/रेफेन्स उत्तरित करने का अधिकार प्राप्त नहीं हो जाता है। इस न्यायनिर्णय के पेरा सं.11 में माननीय उच्चतम न्यायालय द्वारा “मदनपालसिंह बनाम उत्तरप्रदेश राज्य व अन्य—एआईआर 2000 एस.सी. 537” के निर्णय को विवेचित किया गया है तथा अन्त में यह निष्कर्ष निकाला गया कि श्रम न्यायालय निर्देश में वर्णित बिन्दुओं तक ही सीमित क्षेत्राधिकार रखता है एवं उसको पक्षकारों के नामों में निर्देश से परे जाकर संशोधन आदि का अधिकार प्राप्त नहीं होता। यदि नामों या तिथि आदि में कोई परिवर्तन या अंकन कराना है तो पक्षकारों को समुचित सरकार के समक्ष इस बाबत पक्ष रखकर उसमें संशोधन कराना होगा, परन्तु श्रम न्यायालय को ऐसा संशोधन करने की अधिकारिता नहीं है। अतः इसी निर्णय को आधार मानते हुए माननीय उच्च न्यायालय द्वारा उक्त मामले में श्रम न्यायालय द्वारा पारित अधिनिर्णय को क्षेत्राधिकार के अभाव का मानते हुए अपास्त कर दिया गया।

7. अब यह न्यायाधिकरण हस्तगत निर्देश/रेफेन्स में अप्रार्थी नियोजक द्वारा प्रार्थी को झाईवर ग्रेड-3 से झाईवर ग्रेड-2 की वेतन शृंखला 1200—1800 में कौनसी तिथि से पदोन्नत नहीं करने एवं उससे कनिष्ठ श्रमिकों के साथ झाईवर ग्रेड-1 के ट्रेड टेस्ट के लिए उसे कौनसी तिथि को नहीं बुलाने की तिथि मानकर अप्रार्थी के उचितता एवं वैधता का विनिश्चय करेगा तथा क्या यह न्यायाधिकरण पक्षकारों द्वारा सुझायी गयी तिथि मानकर प्रकरण का गुणावगुण पर विनिश्चय कर सकता है अथवा निर्देश/रेफेन्स में संशोधन करने की अधिकारिता रखता है? इस सम्बन्ध में माननीय राजस्थान उच्च न्यायालय द्वारा पारित उक्त न्यायदृष्टांत “2003 डबल्यू.एल.सी.(राज.)” यू.सी. पृष्ठ 424—महावीर कण्डकटर बनाम नन्दकिशोर” के पेरा संख्या 12 का उल्लेख किया जाना न्यायसंगत है जिसमें माननीय उच्च न्यायालय द्वारा रेफेन्स के निबन्धन या सेवा समाप्ति तिथि में संशोधन आदि बाबत निम्न स्थिति प्रकट की गयी है:-

“Thus, in view of the above, I reach the inescapable conclusion that the Labour Court has no competence to correct/modify/amend /alter the terms of the reference or mention the date of termination etc., or proceed with the reference and accepting the date of termination as suggested by the workman and in case it does so, the award becomes nullity, being without jurisdiction, based on the bad reference.”

8. अतः माननीय राज. उच्च न्यायालय द्वारा पारित उपरोक्त न्यायदृष्टांत के प्रकाश में हस्तगत मामले में यह न्यायाधिकरण पक्षकारों द्वारा सुझायी गयी तिथि/नाम आदि को संशोधित तिथि/नाम मानकर प्रकरण को गुणावगुण पर निरस्तारित किये जाने की अधिकारिता नहीं रखता है। इस प्रकार माननीय उच्चतम एवं माननीय उच्च न्यायालय द्वारा ऊपर विवेचित किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों के अनुसार हस्तगत प्रकरण में इस न्यायाधिकरण को ऐसे पक्षकारों का संशोधन प्रस्ताव स्वीकार किये जाने की अधिकारिता नहीं होने से इस न्यायाधिकरण की राय में यह न्यायाधिकरण यदि कोई अधिनिर्णय पारित भी करता है तो वह क्षेत्राधिकार के अभाव का होकर शून्य होगा। इन न्यायनिर्णयों के खण्डन में या अन्य कोई न्यायनिर्णय ऐसा पेश भी नहीं किया गया जिसमें कि ऊपर वर्णित स्थिति होने के बावजूद भी न्यायाधिकरण को निर्देश अधिनिर्णित करने का अधिकार प्राप्त हो। अतः कुल मिलाकर स्थिति उक्त न्यायनिर्णयों के ही अभी तक प्रभावशील होने की पायी जाती है। माननीय उच्च न्यायालय एवं माननीय उच्चतम न्यायालय द्वारा पारित उक्त न्यायनिर्णयों में प्रतिपादित सिद्धांतों से यह न्यायाधिकरण आबद्ध है। अतः ऐसी परिस्थिति में सम्पूर्ण विवेचन के उपरान्त इस न्यायाधिकरण की राय में इतना ही कहना पर्याप्त है कि हस्तगत निर्देश/रेफेन्स में अप्रार्थी नियोजक द्वारा प्रार्थी को झाईवर ग्रेड-3 से झाईवर ग्रेड-2 की वेतन शृंखला 1200—1800 में कौनसी तिथि से पदोन्नत नहीं किया गया एवं उससे कनिष्ठ श्रमिकों के साथ झाईवर ग्रेड-1 के ट्रेड टेस्ट के लिए उसे कौनसी तिथि से नहीं बुलाया गया, इन तिथियों का कोई अंकन नहीं होने से यह न्यायाधिकरण ऐसे निर्देश में कोई संशोधन कर अधिनिर्णय पारित करने की अधिकारिता नहीं रखता है एवं यदि पक्षकार सक्षम सरकार से इस बाबत निर्देश/रेफेन्स में संशोधन कराकर न्यायाधिकरण में पेश करते हैं तो न्यायाधिकरण ऐसा संशोधन प्राप्त होने पर प्रकरण में विधि अनुसार कार्यवाही कर

सकेगा, परन्तु इस प्रक्रम पर फिलहाल यह मामला इस न्यायाधिकरण के क्षेत्राधिकार के अभाव का पाया जाता है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दिनांक 9/2/95 के जरिये सम्प्रेषित निर्देश/रेफ़ेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि माननीय राजस्थान उच्च न्यायालय द्वारा पारित उक्त न्यायदृष्टांत "2003 डबल्यू.एल.सी. (राज.) यू.सी. पृष्ठ 424—महावीर कपड़कटर बनाम नन्दकिशोर" में प्रतिपादित सिद्धांत के अनुसरण में हस्तगत निर्देश/रेफ़ेन्स में वर्णित अप्रार्थी नियोजक द्वारा प्रार्थी अब्दुल गनी को डाईवर ग्रेड-3 से डाईवर ग्रेड-2 की वेतन श्रृंखला 1200—1800 में कौनसी तिथि से पदोन्नत नहीं किया गया एवं उससे कनिष्ठ श्रमिकों के साथ डाईवर ग्रेड-1 के देड टेस्ट के लिए उसे कौनसी तिथि से नहीं बुलाया गया, इन तिथि का कोई अंकन नहीं होने से व इस न्यायाधिकरण को पक्षकारों द्वारा सुझायी गयी तिथि को स्वीकार किये जाने की अधिकारिता नहीं होने से हस्तगत निर्देश/रेफ़ेन्स में अधिनिर्णय पारित किया जाना शून्य एवं क्षेत्राधिकार के अभाव का होगा। पक्षकार यदि सक्षम सरकार से उक्त तिथि बाबत निर्देश/रेफ़ेन्स में संशोधन/अंकन कराकर न्यायाधिकरण के समक्ष पेश करेंगे तो न्यायाधिकरण गुणावगुण के आधार पर विधि अनुसार आगे प्रकरण के निस्तारण की कार्यवाही कर सकेगा।

जगमोहन शर्मा, न्यायाधीश

नई दिल्ली, 19 जून, 2017

का.आ. 1522.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 31/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.06.2017 को प्राप्त हुआ था।

[सं. एल-41012/14/97-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th June, 2017

S.O. 1522.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/1997) of the Central Government Industrial Tribunal-cum-Labour Court, Kota as shown in the Annexure, in the industrial dispute between the management of Western Central Railway and their workmen, received by the Central Government on 19.06.2017.

[No. L-41012/14/1997-IR (B-I)]

B. S. BISHT, Section Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी — श्री जगमोहन शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ.न्या.(केन्द्रीय)-31 / 1997

दिनांक स्थापित : 21 / 11 / 97

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश

क्र. एल-41012 / 14 / 97-आईआर(बी)दि.7 / 8.10.97

एवं सपाठित शुद्धिपत्र दि.14 / 4 / 11 एवं अग्रेषण पत्र दि. 22 / 8 / 13

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क) औद्योगिक विवाद अधिनियम, 1947

मध्य

रामस्वरूप पुत्र गोकुल चंद द्वारा संयुक्त महामंत्री, हिन्द मजदूर सभा, बंगाली कोलोनी, छावनी, कोटा।

—प्रार्थी श्रमिक

एवं

प्रबन्धक, पश्चिम मध्य रेलवे, कोटा डिविजन, कोटा।

—अप्रार्थी नियोजक

उपस्थित

प्रार्थी श्रमिक की ओर से प्रतिनिधि : श्री पुरुषोत्तम दाधीच
 अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री रामकल्याण शर्मा
 अधिनिर्णय दिनांक: 30/3/2017

:अधिनिर्णयः

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 7/8.10.1997 के जरिये निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त “अधिनियम” से सम्बोधित किया जावेगा) की धारा 10(1घ) एवं उपधारा 2(क) के अन्तर्गत इस न्यायाधिकरण को प्राप्त हुआ। इसी क्रम में एक शुद्धिपत्र दिनांक 14/4/11 का भी अग्रेषण पत्र दि. 22/8/13 के साथ संलग्न होकर प्राप्त हुआ जिस शुद्धिपत्र के अनुसार पूर्व के आदेश/अनुसूची/विवाद के स्थान पर अब निम्नांकित संशोधित अनुसूची अधिनिर्णयार्थ सम्प्रेषित की गयी है जिस अनुसार प्रकरण के निस्तारण की कार्यवाही की जा रही है:-

“क्या रेलवे प्रशासन डिविजनल रेलवे प्रबन्धक, कोटा डिविजन, कोटा द्वारा कर्मकार श्री रामस्वरूप पुत्र श्री गोकुल चंद, अरथाई दर्जा प्राप्त को दिनांक 1/7/1991 से सेवा से पृथक करने की कार्यवाही उचित एवं न्यायसंगत है? यदि नहीं तो संबंधित कर्मकार किस अनुतोष का हकदार है और किस तारीख से?”

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्व उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थी श्रमिक की ओर से क्लेम स्टेटमेन्ट न्यायाधिकरण के समक्ष प्रस्तुत सक्षिप्तः व्यक्त किया गया है कि प्रार्थी को अप्रार्थी द्वारा दि. 4/4/84 से ग्रीष्मकालीन पानीवाले के पद पर दैनिक वेतन पर सेवामें नियोजित किया गया था। 5/9/88 के पत्र द्वारा उसे एन.ए.सी. बना दिया गयाव 15 दिन एन.ए.सी. में रखकर पुनः ग्रीष्मकालीन पानीवाले के पद पर लगा दिया जो 30/6/91 तक रहा। प्रार्थी को पत्र दि. 26/8/86 के द्वारा दि. 23/5/86 से अस्थाई श्रमिक का दर्जा दिया गया जिस अनुसार उसे वर्ष में एक बार मुफ्त पास तथा ब्वार्टर अलाउन्स, बोनस, मेडिकल सुविधायें आदि प्राप्त होने लगी। इस प्रकार यूनिट 2 में एन.ए.सी. श्रमिक मान लिया गया। प्रार्थी द्वारा अप्रार्थी से स्थाई किये जाने की मांग करने पर उसे 1/7/91 से अचानक बिना कोई कारण बताये व बिना किसी सूचना के नौकरी से हटा दिया गया। यह भी व्यक्त किया गया है कि दि. 30/2/90 की एनएसी श्रमिकों की प्रकाशित वरिष्ठता सूची में प्रार्थी का नाम कं.सं.115 पर अंकित है तथा इसके बाद के क्रम सं. 123 तक किशोरीलाल, कमलबाई, किशनसिंह, कमलसिंह, सूरज, सुरेश कुमार व रामस्वरूप पुत्र जनसी आदि सभी श्रमिक इससे कनिष्ठ हैं, जिन्हें कि स्थायी किया जा चुका है और ये आज भी अप्रार्थी के नियोजन में मौजूद हैं। इसके अलावा उसे सेवा से निकाले जाने के बाद कई नये श्रमिक भी नियोजित कर लिये गये हैं। इस प्रकार अप्रार्थी द्वारा प्रार्थी को अधिनियम की धारा 25—एफ, जी व एच के प्रावधानों की पालना किये गये हैं। इस प्रकार अप्रार्थी द्वारा प्रार्थी को अधिनियम की धारा 25—एफ, जी व एच के प्रावधानों की पालना किये गये हैं। अन्त में प्रार्थना की गयी है कि उसे पिछले सम्पूर्ण वेतन, लाभों सहित सेवामें बहाल किया जाकर उससे कनिष्ठ श्रमिकों को स्थायी किये जाने की तिथि से ही स्थायी का दर्जा दिया जावे।

4. उपरोक्त क्लेम स्टेटमेन्ट का जवाब प्रस्तुत करते हुए अप्रार्थी की ओर से व्यक्त किया गया है कि प्रार्थी ने दि. 4/4/84 से ग्रीष्मकालीन पानीवाले में भर्ती होने व 5/9/88 से एन.ए.सी. श्रमिक माने जाने सम्बन्धी कोई साक्ष्य प्रस्तुत नहीं की है, ना ही 26/8/86 के पत्र द्वारा अस्थाई श्रमिक का दर्जा देने बाबत कोई साक्ष्य प्रस्तुत की है। प्रार्थी को समय—समय पर आकस्मिक ग्रीष्मकालीन पानीवाले के रूप में लगाया जाता था जो कार्य कुछ माह के लिए ही होता था। पत्र दि. 17/1/92 के अनुसार दि. 14/7/81 के बाद भर्ती किये गये श्रमिकों को वर्ष 1992 के ग्रीष्मकालीन पानीवालों में भर्ती नहीं किया जाना था, इस कारण प्रार्थी को दि. 1/7/91 से इस रूप में कार्य पर नहीं लगाया गया। प्रार्थी द्वारा उल्लेखित व्यक्ति ग्रीष्मकालीन पानीवाले दि. 14/7/81 से पूर्व के भर्ती थे और वे आज भी उक्त श्रेणी में ही कार्यरत हैं तथा किसी को भी नियमित नहीं किया गया है। प्रार्थी द्वारा बतलाये गये श्रमिक रामस्वरूप पुत्र जनसी, किशन, सूरज, सुरेश, कमला व किशोर को नियमित इसलिए किया गया है क्योंकि उक्त व्यक्ति एन.ए.सी. में ही कार्यरत थे, वे ग्रीष्मकालीन पानीवाले के रूप में कर्तव्य कार्यरत नहीं थे। श्रमिक कमल तथा राधेश्याम आकस्मिक ग्रीष्मकालीन पानीवाले हैं जिन्हें नियमित नहीं किया गया है व समय—समय पर उन्हें ग्रीष्मकालीन पानीवाले में ही लगाया जाता है तथा ये श्रमिक 14/7/81 के पूर्व भर्ती के भर्ती किये हुए हैं। प्रार्थी को कार्य से हटाने के बाद अनुकम्पात्मक नियुक्ति के अलावा किसी को आकस्मिक श्रमिक के रूप में नियुक्त नहीं किया गया। अन्त में प्रार्थी श्रमिक का क्लेम निराधार तथ्यों का होने से सव्यय निरस्त किये जाने की प्रार्थना की गयी है।

5. साक्ष्य में स्वयं प्रार्थी श्रमिक रामस्वरूप तथा अप्रार्थी पक्ष की ओर से अजीजुदीन, प्रधान लिपिक के शपथ—पत्र प्रस्तुत हुए हैं, जिनसे दोनों पक्षों के प्रतिनिधिगण द्वारा एक—दूसरे पक्ष के शपथ—पत्रों पर जिरह की गयी है। उभयपक्ष की ओर से प्रलेखीय साक्ष्य भी प्रस्तुत की गयी है जिसका यथासमय उल्लेख किया जावेगा।

6. उभयपक्ष के विद्वान प्रतिनिधिगण की बहस सुनी गयी, उनकी ओर से लिखित बहस व विभिन्न न्यायदृष्टांत भी प्रस्तुत किये गये हैं, जिनका ध्यानपूर्वक मनन व अध्ययन किया गया तथा पत्रावली पर उपलब्ध साक्ष्य व सामग्री का परिशीलन किया गया।

7. विद्वान प्रतिनिधि प्रार्थी पक्ष की यह बहस रही है कि प्रार्थी को अप्रार्थी नियोजक द्वारा दि. 4/4/84 से ग्रीष्मकालीन पानीवाले के पद पर दैनिक वेतन पर सेवामें नियोजित किया गया था जिसे 5/9/88 के पत्र द्वारा एन.ए.सी. बना दिया गया व 15 दिन बाद पुनः

ग्रीष्मकालीन पानी वाले पद पर लगा दिया जो दि. 30/6/91 तक कार्यरत रहा। उसे अप्रार्थी द्वारा 23/5/86 से अस्थाई श्रमिक का दर्जा भी प्रदान किया गया तथा सभी सुविधायें प्रदान की गयी जिसकी पुष्टि प्रदर्श डबल्यू३ से होती है। प्रार्थी को कार्य से हटाने से पूर्व अधिनियम की धारा 25—एफ के प्रावधानान्तर्गत कोई नोटिस अथवा नोटिस वेतन व मुआवजा आदि प्रदान नहीं किया गया। प्रार्थी श्रमिक को कार्य से हटाने के समय उससे कनिष्ठ कई श्रमिकगण किशोरीलाल वैराह नियोजन में मौजूद थे, जिन्हें नहीं हटाकर प्रार्थी को हटाया जाना अधिनियम की धारा 25—जी का उल्लंघन है जोकि प्रकाशित वरिष्ठता सूची प्रदर्श डबल्यू७ से स्पष्ट है। प्रार्थी को कार्य से हटाये जाने के बाद नये श्रमिकों को भी नियोजित किया जाना धारा 25—एच का उल्लंघन है। अतः प्रार्थी श्रमिक को उक्त प्रकार से सेवा से हटाया जाना अनुचित व अवैध होना बताते हुए पिछले सम्पूर्ण वेतन, लाभों सहित सेवामें लिये जाने व कनिष्ठ श्रमिकों को स्थायी किये जाने की तिथि से थायी किये जाने का अनुतोष प्रदान किये जाने की प्रार्थना की है।

8. इसके विपरीत दूसरी ओर विद्वान प्रतिनिधि अप्रार्थी की बहस रही है कि प्रार्थी ने अप्रार्थी नियोजक द्वारा दि. 4/4/84 से ग्रीष्मकालीन पानी वाले के पद पर नियुक्त किये जाने सम्बन्धी कोई साक्ष्य प्रस्तुत नहीं की है। प्रार्थी को ग्रीष्मकालीन पानी वाले के रूप में समय—समय पर कार्य पर लगाया जाता था जो कार्य नियमित नहीं होता था। प्रार्थी द्वारा किसी भी कलेण्डर वर्ष में लगातार 240 दिन कार्य नहीं किया गया। प्रार्थी को अस्थायी दर्जा अवश्य दिया गया था, किन्तु इसके आधार पर प्रार्थी अधिनियमान्तर्गत कोई लाभ प्राप्त नहीं कर सकता। प्रदर्श डबल्यू७ में प्रार्थी श्रमिक के बाद जिन श्रमिकों के नाम अंकित हैं, वे सभी एन.ए.सी. में कार्यरत थे जोकि प्रार्थी श्रमिक से पूर्व के व भिन्न प्रकृति के पद के थे, ऐसी स्थिति में उनके सेवारत रहने व स्थायी किये जाने का लाभ प्रार्थी प्राप्त नहीं कर सकता। उनका यह भी तर्क रहा है कि प्रार्थी के कार्य से हटाने के बाद कौनसे नये श्रमिकों को नियोजित किया गया है, कोई नाम नहीं बतलाये गये हैं, ना ही ऐसा किया जाना किसी साक्ष्य से सिद्ध किया गया है। अतः प्रार्थी श्रमिक किसी अनुतोष का अधिकारी नहीं है।

9. जहाँ तक प्रार्थी श्रमिक द्वारा अप्रार्थी के नियोजन में निरन्तर 240 दिन कार्य किये जाने का प्रश्न है, प्रार्थी श्रमिक का यह कथन रहा है कि उसने अप्रार्थी नियोजक के अधीन दि. 4/4/84 से ग्रीष्मकालीन पानीवाले के पद पर नियुक्त होकर दि. 30/6/91 तक निरन्तर कार्य किया है, अलबत्ता 15 दिन के लिए उसे एन.ए.सी. बनाया गया था। इस बीच अप्रार्थी द्वारा उसे दि. 23/5/86 से अस्थायी श्रमिक का दर्जा भी प्रदान किया गया है। इस प्रकार प्रार्थी द्वारा उक्त नियोजनावधि में निरन्तर 240 दिन से भी अधिक समय तक कार्य किया गया है, किन्तु उसे 1/7/91 से अधिनियम की धारा 25—एफ व अन्य प्रावधानों की पालना किये बिना अनुचित व अवैध रूप से सेवा से हटा दिया गया। इस सम्बन्ध में माननीय उच्चतम न्यायालय द्वारा अपने न्यायनिर्णय “2006(2)एसीजे 408(एससी)—सुरेन्द्रनगर डिस्ट्रिक्ट पंचायत एवं अन्य बनाम गंगाबेन लालजी भाई एवं अन्य” में यह अभियोग प्रकट किया गया है कि जब भी कोई कर्मकार नियोजक के नियोजन में निरन्तर 240 दिन तक कार्य किया जाना व्यक्त करता है तो इस तथ्य को साबित करने का भार स्वयं कर्मकार पर ही रहता है कि उसने सेवा समाप्ति से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन तक नियोजक के नियोजन में कार्य किया है। इसी प्रकार न्यायदृष्टांत “2006(108) एफएलआर 213(एससी)—आर.एम.येल्टटी बनाम सहायक अधिकारी अभियन्ता” के मामले में माननीय उच्चतम न्यायालय द्वारा यह भी प्रतिपादित किया गया है कि कर्मकार पर 240 दिन लगातार काम करने के तथ्य को साबित करने का जो भार है, उसमें कर्मकार द्वारा केवल मात्र अपने शपथ—पत्र में यह लिख देना कि उसने 240 दिन तक लगातार काम किया, पर्याप्त नहीं होगा, अपितु उसे किसी ठोस मौखिक एवं दस्तावेजी साक्ष्य से इस तथ्य को साबित करना होगा जिससे कि यह तथ्य सम्पूर्ण हो सके। इस सम्बन्ध में न्यायनिर्णय का पेरा संख्या 17 निम्नानुसार है:-

“Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of terminating of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter of facts of each case. The above however make it clear that mere affidavits or self-serving statements made by the claimant/ workman will not suffice in the matter of discharge of the burden placed for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon facts of each case.”

10. हस्तगत मामले में प्रार्थी श्रमिक ने अप्रार्थी के नियोजन में 240 दिन कार्य किये जाने के तथ्य को साबित करने के लिए स्वयं का शपथ—पत्र न्यायालय के समक्ष प्रस्तुत कर व्यक्त किया है कि प्रार्थी द्वारा अप्रार्थी के नियोजन दि. 4/4/84 से ग्रीष्मकालीन पानीवाले के पद पर दैनिक वेतन पर नियोजित होकर 30/6/91 तक निरन्तर 240 दिन से अधिक की सेवायें पूरी कर ली गयी थीं तथा उसे इस बीच

अस्थायी श्रमिक का दर्जा भी प्रदान कर दिया गया था, परन्तु उसे 1/7/91 को अधिनियम की धारा 25—एफ व अन्य आज्ञापक प्रावधानों की पालना किये बिना अवैधानिक रूप से सेवा से हटा दिया गया। उसने यह भी कथन किया है कि उसे नौकरी से निकाले जाने के समय उससे कनिष्ठ श्रमिकगण किशोरीलाल आदि भी कार्यरत थे जो नियोजन में मौजूद रखे गये। उसने अपने नियोजन के सम्बन्ध में पुष्टि स्वरूप प्रदर्श डबल्यू.1 लगायत डबल्यू.14 प्रलेख भी प्रस्तुत किये हैं। प्रार्थी श्रमिक ने अपनी जिरह में कथन किया है कि मुझे दि. 4/4/84 से 25/7/84 तक भर्ती किया था, फिर 85 में चार महीने के लिए भर्ती किया था, दो माह के लिए कभी भी भर्ती नहीं किया, मुझे चार—चार महीने के लिए भर्ती करते थे, मुझे 91 तक साल भर में चार—चार महीने के लिए भर्ती करते थे। यह बात सही है कि मैंने सालभर में चार महीने से ज्यादा काम नहीं किया। इसका जिरह में आगे यह कथन भी रहा है कि प्रदर्श डबल्यू.7 में कं.सं.116 लगायत 123 आदियों के जो नाम दर्ज हैं, वे सभी 84 में आये थे, वे सभी मुझसे कनिष्ठ थे, यह मैं इस आधार पर कह रहा हूँ कि इनके नाम मुझसे नीचे अंकित रहे हैं। मुझे पता नहीं कि मुझसे जूनियर कर्मचारी मुझसे पहले से काम कर रहे हैं अथवा नहीं। इसने आगे यह भी स्पष्टतः कथन किया है कि ये बात सही है कि मुझे एक साल में चार महीने अप्रैल से जुलाई तक के लिए नियुक्ति दी जाती थी। अप्रार्थी साक्षी अजीजुद्दीन ने अपने जवाब में वर्णित तथ्यों की ही पुनरावृत्ति करते हुए अपने शपथ—पत्र में स्पष्टतः कथन किया है कि रेलवे विभाग द्वारा प्रार्थी से समय—समय पर आकस्मिक ग्रीष्मकालीन पानी वाले के रूप में कार्य लिया जाता था जो पूर्णस्पेन कुछ माह के लिए ही होता था। इस साक्षी का आगे यह कथन भी रहा है कि प्रार्थी ने जिन व्यक्तियों का हवाला दिया है, वे सभी श्रमिक 14/7/81 से पूर्व, अर्थात् प्रार्थी श्रमिक से पूर्व के व भिन्न पद के थे। इस साक्षी ने अपनी जिरह में यह कथन किया है कि कं.सं.116 से 123 तक सफाई वाले एन.ए.सी. कर्मचारी थे और रामस्वरूप ग्रीष्मकालीन पानीवाला रहा था। इस प्रकार एक ओर तो प्रार्थी अपने क्लेम स्टेटमेन्ट व शपथ—पत्र में अप्रार्थी के यहाँ अपना नियोजन 4/4/84 से 30/6/91 तक अनवरत होना व निरन्तर 240 दिन से भी अधिक समय तक कार्यरत होना अंकित कर रहा है, जबकि इसके विपरीत उसने अपनी जिरह में स्पष्ट रूप से स्वयं यह कथन किया है कि उसे अप्रार्थी नियोजक के यहाँ दि.4/4/84 से आगामी वर्षों में चार—चार महीने के लिए ही उक्त कार्य के लिए भर्ती किया जाता था। इसके अतिरिक्त प्रार्थी ने अपने शपथ—पत्र में उससे कनिष्ठ श्रमिकगण किशोरीलाल आदि को अप्रार्थी द्वारा कार्य पर रखते हुए उसे कार्य से हटाने का कथन किया है, किन्तु वरिष्ठता सूची प्रदर्श डबल्यू.7 के अनुसार ये सभी श्रमिकगण प्रार्थी श्रमिक की नियुक्ति तिथि से पूर्व दि. 14/7/81 व भिन्न प्रकृति के पद वाले रहे हैं। प्रार्थी की ओर से जो प्रलेख प्रदर्श डबल्यू.1 लगायत डबल्यू.14 तक पेश किये गये हैं, उनसे भी प्रार्थी द्वारा अप्रार्थी के यहाँ सेवा पृथक तिथि से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य पूर्ण किये जाने की प्रमाणिकता सिद्ध नहीं होती है। इस प्रकार प्रार्थी अपनी साक्ष्य से यह प्रमाणित नहीं कर पाया है कि उसके द्वारा अप्रार्थी के यहाँ सेवा समाप्ति तिथि 1/7/91 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य कर लिये जाने के तथ्य को साबित किये जाने में पूर्णतया असफल रहा है।

11. इसी प्रकार अप्रार्थी नियोजक पक्ष की ओर से प्रस्तुत माननीय राजस्थान उच्च न्यायालय के न्यायदृष्टांत “2007 (3) आरएलडबल्यू 1999(राज.)—चेरमेन, म्यूनिसिपल बोर्ड बनाम महावीरप्रसाद शर्मा एवं अन्य” में यह अभिमत प्रकट किया गया है कि स्पष्ट साक्ष्य से यह साबित करने का सबूत भार कर्मकार पर रहता है कि उसने अन्तिम कलेण्डर वर्ष में 240 दिन कार्य किया था। कर्मकार का मात्र शपथ—पत्र प्रस्तुत करना ही पर्याप्त नहीं है व नियोजक/प्रबन्धक द्वारा अभिलेख पेश नहीं करने से प्रबन्धक के विरुद्ध प्रतिकूल अनुमान निकालने की न्यायालय को अनुमति नहीं होगी।

12. अब जहाँ तक प्रार्थी श्रमिक का यह मामला कि उससे कनिष्ठ आकस्मिक श्रमिकों को तो कार्यरत रखा गया, किन्तु प्रार्थी को कार्य से हटा दिया गया जोकि अधिनियम की धारा 25—जी का स्पष्टतः उल्लंघन है। इस परिप्रेक्ष्य में पुनः साक्ष्य का परिशीलन करें तो यद्यपि प्रार्थी की यह साक्ष्य रही है कि उससे कनिष्ठ श्रमिकगण किशोरीलाल वगैरह को तो नौकरी पर अनवरत रखा गया, किन्तु उसे कार्य से हटा दिया गया। किन्तु इस सम्बन्ध में अप्रार्थी पक्ष की यह भी स्पष्ट साक्ष्य रही है कि जिन श्रमिकगण के नाम प्रार्थी ने बतलाये हैं, वे प्रार्थी से पूर्व तिथियों से नियुक्त हुए व भिन्न प्रकृति के पद के रहे हैं तथा प्रधान कार्यालय के पत्र कं. 17/1/92 के तहत उन्हीं ग्रीष्मकालीन पानी वालों को एंगेज किया जाना था जोकि दिनांक 14/7/81 से पूर्व के भर्ती के हों तथा जिन्होंने पिछले वर्ष काम किया हो। इस साक्ष्य की पुष्टि अप्रार्थी विभाग की ओर से जारी परिपत्र जो दिनांकित 17/1/92 प्रदर्श एम.2 के रूप में अभिलेख पर प्रस्तुत किया गया है, उससे होती है जिसमें इसी प्रकार का वर्णन रहा है। स्पष्टतः अप्रार्थी की ओर से यह मौखिक व प्रलेखीय साक्ष्य अखण्डित रही है। अतः यह नहीं माना जा सकता कि प्रार्थी श्रमिक के मामले में अप्रार्थी नियोजक द्वारा अधिनियम की धारा 25—जी के प्रावधान का उल्लंघन किया गया हो।

13. इसके अतिरिक्त प्रार्थी श्रमिक का यह कथन कि उसे कार्य से हटाये जाने के उपरान्त कई नये श्रमिकों को नियोजित कर लिया गया, किन्तु उसे पुनः नियोजन का अवसर प्रदान नहीं किया गया जोकि अधिनियम की धारा 25—एच का उल्लंघन है। इस सम्बन्ध में स्वयं प्रार्थी श्रमिक द्वारा ऐसे व्यक्तियों के नाम अपने क्लेम स्टेटमेन्ट या साक्ष्य में प्रकट नहीं किये गये हैं जिनको कि प्रार्थी को कार्य से हटाये जाने के बाद नियुक्त किया गया हो। अतः मामले में अप्रार्थी द्वारा अधिनियम की धारा 25—एच का उल्लंघन किया जाना भी नहीं पाया जाता।

14. प्रार्थी श्रमिक पक्ष की ओर से न्यायदृष्टांत “आरएलआर 2005(3)पृष्ठ 592—बीडीओ बनाम छगनलाल एवं अन्य, 2010(124)एफएलआर 700(एससी)—हरजिन्दर सिंह बनाम पंजाब स्टेट वेयरहाउसिंग कोर., 2015(145) एफएलआर 184(एससी)—मेकिनन मेकिनिज एण्ड कंपनी बनाम मेकिनन एम्प्लोईज यूनियन तथा 1976 एससीएलजे 85—स्टेट बैंक आफ इण्डिया बनाम एन.सुन्दरमनी” पेश किये गये हैं, परन्तु हस्तगत मामले में प्रार्थी श्रमिक द्वारा अप्रार्थी के नियोजन में सेवा समाप्ति की तिथि से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन

कार्य किये जाने का तथ्य प्रमाणित नहीं है तथा प्रार्थी औ.वि.अधिनियम की धारा 25—एफ का संरक्षण प्राप्त करने का अधिकारी नहीं माना गया है, इन परिस्थितियों में प्रार्थी श्रमिक की ओर से प्रस्तुत उक्त समस्त न्यायदृष्टांत प्रार्थी श्रमिक को कोई लाभ नहीं पहुँचाते हैं।

15. प्रार्थी श्रमिक की ओर से न्यायदृष्टांत “1991(2)राज. पृष्ठ 158—ओरियन्टल बैंक आर्क कॉमर्श बनाम पीओ, सेन्ट्रल गवर्नर्मेन्ट इण्ड. दिव्यूनल एवं अन्य” पेश किया गया है, परन्तु हस्तगत मामले में प्रार्थी की ओर से अप्रार्थी द्वारा औ.वि.अधिनियम की धारा 25—जी व एच की अपहेलना किये जाने का तथ्य साक्ष्य से प्रमाणित नहीं किया गया है, अतः उक्त न्यायदृष्टांत भी प्रार्थी श्रमिक को कोई लाभ नहीं पहुँचाता है।

16. प्रार्थी श्रमिक की ओर से न्यायदृष्टांत “2013(139)एफएलआर 541(एससी)—दीपाली गुण्डु सुरवेस बनाम कान्ति जूनियर अध्यापक एवं अन्य” पेश किया गया है। उक्त न्यायदृष्टांत में वर्णित तथ्यों के मुताबिक यदि किसी न्यायालय अथवा अन्य सक्षम न्यायिक/अद्वन्यायिक मंच/निकाय द्वारा कर्मकार के विरुद्ध की गयी कार्यवाही को अवैधानिक अथवा नैसर्गिक न्याय सिद्धांतों के विपरीत पाया जाता है तो ऐसी परिस्थिति में कर्मकार पुनः सेवामें नियोजित होने योग्य है, परन्तु हस्तगत मामले में ऐसी स्थिति नहीं है, अतः उक्त न्यायदृष्टांत भी प्रार्थी श्रमिक को कोई लाभ नहीं पहुँचाता है।

17. इस प्रकार पत्रावली पर उपलब्ध साक्ष्य के सम्पूर्ण विवेचन से हम इस निष्कर्ष पर पहुँचते हैं कि प्रार्थी श्रमिक, अप्रार्थी नियोजक के नियोजन में सेवा समाप्ति की तिथि 1/7/91 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन कार्य किये जाने के तथ्य को साबित करने में पूर्णतया असफल रहा है। प्रार्थी श्रमिक, अप्रार्थी नियोजक द्वारा मामले में अधिनियम की धारा 25—जी एवं एच का उल्लंघन किये जाने के तथ्य को भी प्रमाणित करने में असफल रहा है। अतः इन समस्त परिस्थितियों में प्रार्थी श्रमिक अधिनियम की धारा 25—एफ, जी एवं एच के प्रावधानान्तर्गत कोई संरक्षण प्राप्त करने का अधिकारी नहीं होने से अप्रार्थी नियोजक के विरुद्ध किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी होना नहीं पाया जाता है एवं सम्प्रेषित निर्देश/रेफेन्स भी इसी अनुरूप उत्तरित होने योग्य है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दिनांक दि. 7/8.10.97 एवं सप्तित शुद्धिपत्र दि. 14/4/11 एवं अग्रेषण पत्र दि. 22/8/13 के जिये सम्प्रेषित निर्देश/रेफेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थी श्रमिक रामस्वरूप, अप्रार्थी नियोजक के नियोजन में सेवा समाप्ति की तिथि 1/7/91 से ठीक पूर्व के 12 कलेण्डर माह की अवधि में निरन्तर 240 दिन का कार्य किये जाने के तथ्य को साबित किये जाने में पूर्णतया असफल रहा है। इसके साथ ही अधिनियम की धारा 25—जी व एच का अप्रार्थी द्वारा उल्लंघन किये जाने के तथ्य को भी साबित किये जाने में असफल रहा है। अतः प्रार्थी अधिनियम की धारा 25—एफ, जी एवं एच के प्रावधानान्तर्गत उसे कोई संरक्षण प्राप्त नहीं होने से अप्रार्थी नियोजक के विरुद्ध किसी प्रकार का कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

जगमोहन शर्मा, न्यायाधीश

नई दिल्ली, 19 जून, 2017

का.आ. 1523.—ऑड्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑड्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 27/1993) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.06.2017 को प्राप्त हुआ था।

[सं. एल-41012/46/92-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th June, 2017

S.O. 1523.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/1993) of the Central Government Industrial Tribunal-cum-Labour Court, Kota as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 19.06.2017.

[No. L-41012/46/92-IR (B-I)]

B. S. BISHT, Section Officer

अनुबंध

न्यायाधीश, ऑड्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी – श्री जगमोहन शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ.न्या.(केन्द्रीय)-27 / 1993

दिनांक स्थापित : 30/9/93

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश

क्र. एल-41012/46/92-आईआर(डी.यू.) दि. 24/9/93

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क) औद्योगिक विवाद अधिनियम, 1947

मध्य

के.एल.माखीजा द्वारा डिविजनल सेकेट्री, पश्चिम रेल्वे कर्मचारी परिषद,
भीमांजमण्डी, कोटा जंक्शन, कोटा।

—प्रार्थी श्रमिक

एवं

डिविजनल रेल्वे मैनेजर, वेस्टर्न रेल्वे, कोटा डिविजन, कोटा।

—अप्रार्थी नियोजक

उपस्थित :

प्रार्थी श्रमिक की ओर से प्रतिनिधि : कोई उपस्थित नहीं।

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री श्याम गुप्ता

अधिनिर्णय दिनांक: 10/2/2017

:अधिनिर्णयः

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 24/9/1993 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरान्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)(घ) एवं उपधारा 2(क)के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

"Whether the action of Railway Admn. in imposing penalty of stoppage of two increments on Shri K.L. Makhija, Head Clerk, DRM Offices, Kota on 28.10.90 is legal and justified? If not, what relief he is entitled to?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थी श्रमिक की ओर से प्रार्थी यूनियन के मण्डल मंत्री द्वारा क्लेम स्टेटमेंट न्यायाधिकरण के समक्ष प्रस्तुत कर व्यक्त किया गया है कि प्रार्थी श्रमिक/कर्मकार के विरुद्ध अप्रार्थी नियोजक के मानक कं. 252 दि. 7/8/90 के अन्तर्गत आरोप-पत्र इस आशय का जारी किया गया कि उसने क्वाटर आवंटन के कार्यालय आदेश दि. 18/9/95 की प्रति सेटिलमेंट सेक्शन को नहीं भेजी जिससे स्व.मोहरसिंह डीजल सहायक की विधाया को ग्रेच्युटी भुगतान में विलम्ब हुआ और रेल मंत्री तक इसकी शिकायत पहुँची। प्रार्थी ने प्रतिवेदन दि.13/8/90 में प्रतिरक्षा कथन करते हुए कतिपय प्रासांगिक अभिलेखों की प्रतियों के अवलोकन हेतु अप्रार्थी से निवेदन किया, किन्तु उसे तत्सम्बन्धित अभिलेख उपलब्ध नहीं करवाया गया। आगे कथन किया है कि प्रचलित नियमान्तर्गत इस प्रकार के आदेशों की प्रति सेटिलमेंट सेक्शन को भेजना अपरिहार्य नहीं है। अप्रार्थी द्वारा उक्त प्रतिरक्षा कथन में निहित प्रतिवेदन की अनदेखी कर उसे एनआईपी पत्र दि. 28/12/90 के द्वारा दो वेतन वृद्धियां रोकने की सजा अधिरोपित कर दी गयी जिसके परिणामस्वरूप प्रार्थी को काफी मानसिक यातना व आर्थिक क्षति हुई और वह कई कनिष्ठ कर्मचारियों से वरिष्ठ होते हुए भी पदोन्नति से वंचित हो गया। प्रार्थी द्वारा उक्त दण्डादेश के विरुद्ध अपील की गयी जो नॉन स्पीकिंग आदेश के द्वारा रद्द कर दी गयी। अप्रार्थी ने अपने पत्र दि. 6/2/92 द्वारा जिस कार्यालय आदेश का सन्दर्भ दिया है वो कभी भी कर्मचारियों की सूचनार्थ एवं मार्गदर्शन हेतु प्रसारित नहीं किया गया ऐसी अवस्था में अप्रभावी कार्यालय आदेश को प्रासांगिक नियमावली के रूप में प्रतिपादित कर प्रार्थी श्रमिक को उक्त सजा दिया जाना वस्तुतः नैसर्गिक न्याय सिद्धांतों के सर्वथा प्रतिकूल है। प्रार्थी को सजा अधिरोपित करने से पूर्व व्यक्तिगत रूप में बचाव के उचित अवसर से भी वंचित किया गया। अन्त में उक्त अधिरोपित दण्डादेश को निरस्त कर समरूप लाभ दिलवाये जाने की प्रार्थना न्यायाधिकरण से की गयी।

4. अप्रार्थी नियोजक पक्ष की ओर से उक्त क्लेम का जवाब प्रस्तुत कर प्रतिवाद स्वरूप व्यक्त किया गया है कि प्रार्थी को मोहरसिंह के निपटारा केस को छोड़कर जिसका कि दिखाया जाना आवश्यक नहीं था और ना ही अभियोग से सम्बन्धित था, अपना पक्ष प्रस्तुत करने हेतु पूर्ण अवसर दिया गया है जिसके सन्दर्भ में दि. 20/8/90, 23/9/90, 23/10/90 के प्रपत्र दस्तावेजात दिखाये जाने के सम्बन्ध में क्रमशः प्रदर्श एम.1, एम.2 व एम.3 संलग्न हैं। प्रार्थी अप्रार्थी विभाग में एक उत्तरदायी प्रधान लिपिक के पद पर कार्यरत था जो सेवाओं के प्रति निष्ठा व कर्तव्य निर्वहन करने में पूर्णरूपेण असफल रहा। प्रार्थी को किन्हीं अन्य की अनउत्तरदायित्व व कर्तव्यनिष्ठा से परे अपनी कार्य प्रणालियों का आधार बनाने व उनका लाभ पाने का कोई प्रशासनिक व वैधानिक अधिकार नहीं है। प्रार्थी द्वारा प्रधान लिपिक जैसे उत्तरदायित्वपूर्ण पद पर कार्यरत रहते हुए व रेल्वे क्वार्टर्स का डीलिंग कार्य करते हुए किशनपाल सिंह के प्रकरण में कार्यालय पत्र दि. 24/9/85 की प्रति निपटारा अनुभाग को पृष्ठांकित नहीं की गयी जिस कारण मोहरसिंह की विधवा पत्नी को डीसीआरजी भुगतान में

विलम्ब हुआ, जबकि क्वार्टर नियमन कार्यालय आदेश में लम्बे समय से प्रचलित प्रक्रिया नियमों और निर्वहन में सम्बन्धित अनुभाग को देना आवश्यक है। प्रार्थी के अनुशासनिक अधिकारी ने प्रार्थी के प्रतिरक्षा कथन का अवलोकन करके नियमानुसार ही आदेश पारित किये हैं तथा अपील अधिकारी ने भी बचाव-पत्र व अन्य सम्बन्धित दस्तावेजों का अवलोकन करने के बाद ही अपील खारिज की है। इस प्रकार अप्रार्थी द्वारा प्रार्थी के विरुद्ध जो दण्डादेश दो वार्षिक वेतन वृद्धियां रोकने का दिया गया है वो उचित है, क्लेम प्रार्थी निराधार होने से सव्यय निरस्त किया जावे।

5. साक्ष्य में स्वयं प्रार्थी श्रमिक किशोरीलाल माखीजा तथा अप्रार्थी पक्ष की ओर से साक्षीगण सुरेशचन्द्र वर्मा, कार्यालय अधीक्षक व अनन्त कुमार टण्डन, मुख्य कार्यालय अधीक्षक के शपथ-पत्र प्रस्तुत किये गये, जिनसे दोनों पक्षों के प्रतिनिधिगण द्वारा एक-दूसरे पक्ष के शपथ-पत्रों पर जिरह की गयी। उभयपक्ष की ओर से प्रलेखीय साक्ष्य भी प्रस्तुत की गयी जिसका यथासमय उल्लेख किया जायेगा।

6. प्रकरण में दि. 21/11/2011 से लेकर 12/1/17 तक निरस्तर ना तो प्रार्थी स्वयं न्यायाधिकरण में उपस्थित हुआ एवं ना उसकी ओर से कोई अधिकृत प्रतिनिधि ही उपस्थित हुआ। अर्थात् लगभग 5 वर्ष की लम्बी अवधि उपरान्त भी प्रार्थी पक्ष की ओर से न्यायाधिकरण में किसी का उपस्थित नहीं होना, अपने प्रकरण के प्रति कोई अभिरुचि नहीं रखते हुए उनकी उदासीनता को ही दर्शाता है और ऐसे में न्यायाधिकरण के समक्ष अब अप्रार्थी पक्ष की बहस अन्तिम सुने जाने के अतिरिक्त अन्य कोई विकल्प शेष नहीं रहता है। अतः अप्रार्थी पक्ष की बहस सुनी गयी तथा पत्रावली का अवलोकन किया गया।

7. विद्वान् प्रतिनिधि प्रार्थी की बहस मुख्यतः उनके द्वारा प्रस्तुत क्लेम स्टेटमेन्ट में वर्णित तथ्यों पर ही आधारित रही है। उनका यह कथन रहा है कि अप्रार्थी द्वारा प्रार्थी पर अधिरोपित आरोप क्वार्टर आवंटन के कार्यालय आदेश की प्रति सेटलमेन्ट सेक्शन को नहीं भेजने से स्व.मोहरसिंह डीजल सहायक की विधवा को ग्रेच्युटी भुगतान में विलम्ब होने का जो कारण रहा है, वो अप्रार्थी पक्ष द्वारा उस पर प्रमाणित नहीं हुआ है, क्योंकि प्रथम तो ऐसे आदेश की प्रति प्रचलित नियमान्तर्गत सेटलमेन्ट सेक्शन को भेजना जरूरी नहीं रहा है व द्वितीय इस सम्बन्ध में अप्रार्थी विभाग द्वारा प्रार्थी को कोई सूचना अथवा मार्गदर्शन प्रसारित नहीं किया गया। अतः दि. 28/10/90 के आदेश द्वारा जो उसे दो वार्षिक वेतन वृद्धि की सजा दी गयी है वो उचित नहीं है, यह आदेश निरस्त कर समरूप लाभ प्रदान किया जावे।

8. इसके विपरीत दूसरी ओर अप्रार्थी पक्ष के विद्वान् प्रतिनिधि का तर्क रहा है कि प्रार्थी श्रमिक एक प्रधान लिपिक जैसे मुख्य पद पर आसीन था जोकि रेलवे क्वार्टर आवंटन का कार्य कर रहा था, का पूर्ण दायित्व था कि वो रेलवे नियमावली अनुसार सम्बन्धित को क्वार्टर आवंटन की पूर्ण सूचना समय पर उपलब्ध करवावे। चूंकि प्रार्थी अपने कर्तव्य के प्रति उदासीन रहा है जिससे सम्बन्धित को समय पर क्वार्टर आवंटन सूचना उपलब्ध नहीं होने से डीसीआरजी के भुगतान में विलम्ब हुआ है, अतः इस सम्बन्ध में अधिरोपित आरोप प्रमाणित होने से उसे जो दो वार्षिक वेतन वृद्धि रोके जाने का दण्डादेश दिया गया है वो उचित है। क्लेम प्रार्थी निरस्तनीय है।

9. प्रार्थी श्रमिक द्वारा प्रस्तुत शपथ-पत्र में क्लेम में वर्णित तथ्यों की पुनरावृत्ति की गयी है, परन्तु उसने स्वयं ने अपनी जिरह में यह स्वीकारोक्ति की है कि रेलवे कर्मचारियों को जो क्वार्टर दी जाती थी, इस बाबत भी पत्रावलीयां उसके पास थीं। उसका जिरह में यह भी स्पष्ट कथन रहा है कि आरोप-पत्र में मैंने मेरा बचाव प्रस्तुत किया था। इसके विपरीत अप्रार्थी पक्ष की ओर से प्रस्तुत साक्षी सुरेश चन्द्र वर्मा ने अपने शपथ-पत्र में यह स्पष्ट कथन किया है कि डी.ए.आर. कार्यवाही के दौरान विचाराधीन प्रकरण से सम्बन्धित सभी अभिलेख उसे दिखाये गये थे व आरोपित आरोप के सम्बन्ध में अपना पक्ष प्रस्तुत करने का पूर्ण अवसर प्रदान किया गया था। जॉच से मोहरसिंह की विधवा श्रीमती रमादेवी को डीसीआरजी के भुगतान में विलम्ब होने में प्रार्थी श्रमिक की लापरवाही व प्रचलित नियमों की अवज्ञा होना साबित पाया गया जिस हेतु विभागीय नियमानुसार अपने कर्तव्यों का निर्वहन नहीं होने के कारण ही उपरोक्त दण्ड दिया गया। इस साक्षी का जिरह में यह स्पष्ट कथन रहा है कि गजट नोटिफिकेशन सम्बन्धित आदेशों की प्रतियां सम्बन्धित को भेजने की जिम्मेदारी हेड कर्लक की है। डिसीप्लेनरी ओथोरिटी का इन्कामेन्ट रोकने का आदेश प्रदर्श ड.6, चार्जशीट ड.7 व अपील निर्णय ड.8 है। अप्रार्थी के द्वितीय साक्षी अनन्तकुमार टण्डन ने भी प्रार्थी का प्रधान लिपिक के पद पर कार्यरत होना व नियमानुसार प्रचलित प्रणाली का पालना न होने पर दोषी पाये जाने का कथन अपने शपथ-पत्र में किया है। इस गवाह ने अपनी जिरह में कथन किया है कि मैं जो भी बयान दे रहा हूँ वो रेकार्ड के आधार पर दे रहा हूँ। इसकी भी जिरह में यह स्पष्ट साक्ष्य रही है कि डीलिंग कर्लक का यह कर्तव्य रहा था कि जहा-जहाँ प्रति जानी थी, वो उक्त आदेश में दर्शाता।

10. इस प्रकार अभिलेख पर उपलब्ध मौखिक व प्रलेखीय साक्ष्य के विवेचनोपरान्त यह स्पष्ट प्रकट होता है कि प्रार्थी श्रमिक द्वारा एक प्रधान लिपिक के पद पर होते हुए नियमानुसार अपने कर्तव्यों का पालन नहीं किया गया जिससे एक रेलवे कर्मी की विधवा पत्नी को क्वार्टर आवंटन के कार्यालय आदेश की प्रति सेटलमेन्ट सेक्शन को नहीं भेजने के कारण उसकी ग्रेच्युटी आदि राशि के भुगतान में विलम्ब हुआ। प्रार्थी का यह कृत्य प्रचलित नियमों के विरुद्ध होने से लापरवाही का द्योतक होना पाया गया है जिसके लिए अप्रार्थी नियोजक द्वारा उसे दिनांक 28/10/90 के आदेश द्वारा जो दो वार्षिक वेतन वृद्धि रोके जाने का दण्ड से दण्डित किया जाना उचित एवं वैध है, फलस्वरूप वह किसी प्रकार का कोई प्राप्त करने का अधिकारी नहीं है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दिनांक 24/9/1993 के जरिये सम्प्रेषित निर्देश/रेफेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि अप्रार्थी नियोजक द्वारा प्रार्थी श्रमिक के विरुद्ध अधिरोपित आरोप के प्रमाणित होने के फलस्वरूप आदेश दिनांक 28/10/90 के द्वारा दो वार्षिक वेतन वृद्धि रोके जाने के दण्ड से दण्डित किया जाना उचित एवं वैध है, फलस्वरूप वह किसी प्रकार का कोई प्राप्त करने का अधिकारी नहीं है।

जगमोहन शर्मा, न्यायाधीश

नई दिल्ली, 19 जून, 2017

का.आ. 1524.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 2/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.06.2017 को प्राप्त हुआ था।

[सं. एल-41012/192/94-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th June, 2017

S.O. 1524.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/1996) of the Central Government Industrial Tribunal-cum-Labour Court, Kota as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 19.06.2017.

[No. L-41012/192/94-IR (B-I)]

B. S. BISHT, Section Officer

अनुबंध

न्यायाधीश, ऑद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी — श्री जगमोहन शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : ऑ.न्या.(केन्द्रीय)-2 / 1996

दिनांक स्थापित : 16 / 1 / 96

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश

क्र. एल-41012 / 192 / 94-आईआर(बी-I) दि.5 / 1 / 1996

निर्देश/विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क) ऑद्योगिक विवाद अधिनियम, 1947

मध्य

मोहनलाल पुत्र जगन्नाथ निवासी रेलवे कोलोनी
कुरुलासी स्टेशन तह. गरोट जिला मंदसोर (मध्यप्रदेश)।

—प्रार्थी श्रमिक

एवं

डी.आर.एम. वेस्टर्न रेलवे, कोटा।

—अप्रार्थी नियोजक

उपस्थित :

प्रार्थी श्रमिक की ओर से प्रतिनिधि : कोई उपस्थित नहीं।

अप्रार्थी नियोजक की ओर से प्रतिनिधि : श्री श्याम गुप्ता

अधिनिर्णय दिनांक: 10 / 2 / 2017

अधिनिर्णय:

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 5 / 1 / 1996 के जरिये निम्न निर्देश विवाद, ऑद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरात्त “अधिनियम” से सम्बोधित किया जावेगा) की धारा 10(1)घ) एवं उपधारा 2(क) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

"Whether the action of the D.R.M., W. Railway, Kota Div. in not granting Temporary Status to their workman (Waterman) Shri Mohanlal S/o Shri Jagannath after completion of 120 days service during the period of two years in 1990-1991 is fair and justified? If not what relief the concerned workman is entitled to and from what date?"

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्ध उपरान्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थी श्रमिक की ओर से क्लेम स्टेटमेन्ट न्यायाधिकरण के समक्ष प्रस्तुत कर व्यक्त किया गया है कि अप्रार्थी, प्रार्थी का नियोजक है, प्रार्थी ने 4/4/90 से 1/6/91 तक ग्रीष्मपानी वाले के पद पर 142 दिन कार्य किया है जैसा कि स्टेशन मास्टर कुरलासी के रेकार्ड दि. 23/6/92 से सिद्ध होता है। प्रार्थी द्वारा लगातार 2 साल में 120 दिन काम कर लेने के पश्चात रेलवे बोर्ड के पत्र दि. 25/1/85 के प्रावधानानुसार अस्थायी दर्जा पाने का अधिकारी है जो प्रार्थी को प्रदान नहीं किया जाना अनुचित है। अतः प्रार्थी को 2 साल की सेवा अवधि में 120 दिन पूरे कर लेने के पश्चात अस्थाई कर्मकार का दर्जा दिलाने व स्थायी नौकरी दिये जाने की प्रार्थना न्यायाधिकरण से की गयी है।

4. उपरोक्त क्लेम स्टेटमेन्ट का जवाब प्रस्तुत कर अप्रार्थी की ओर से व्यक्त किया गया है कि प्रार्थी द्वारा बतलायी गयी उक्त नियोजनावधि में दो अलग-अलग सत्रों में 142 दिन कार्य किया गया है, किन्तु वह इस अवधि के अन्तराल में तीन दिन से अधिक अनाधिकृत रूप से अनुपस्थित रहा है। इस प्रकार उसने दो भिन्न-भिन्न सत्रों में लगातार 120 दिन कार्य नहीं किया, अतः वह निर्धारित पात्रता नहीं रखने से अस्थाई का दर्जा प्राप्त करने का अधिकारी नहीं है। आगे व्यक्त किया गया है कि प्रार्थी की प्रथम भर्ती दि. 4/4/90 रही है तथा 14/7/81 से पहले के भर्तीशुदा उक्त पद वाले व्यक्ति अभी तक स्थायी दर्जा प्राप्त नहीं कर पाये हैं, अतः वह स्थायी दर्जा भी प्राप्त करने का अधिकारी नहीं है। अतः क्लेम प्रार्थी निराधार होने से सव्यय निरस्त किये जाने की प्रार्थना की गयी।

5. साक्ष्य में स्वयं प्रार्थी श्रमिक मोहनलाल तथा अप्रार्थी पक्ष की ओर से साक्षी अजीजुद्दीन, प्रधान लिपिक के शपथ-पत्र प्रस्तुत हुए, जिनसे दोनों पक्षों के प्रतिनिधिगण द्वारा एक-दूसरे पक्ष के शपथ-पत्रों पर जिरह की गयी। उभयपक्ष की ओर से प्रलेखीय साक्ष्य भी प्रस्तुत की गयी है जिसका यथासमय उल्लेख किया जायेगा।

6. प्रकरण में दि. 29/2/12 से लेकर 12/1/17 तक निरन्तर ना तो प्रार्थी स्वयं न्यायाधिकरण में उपस्थित हुआ एवं ना ही उसकी ओर से कोई अधिकृत प्रतिनिधि उपस्थित हुआ। अर्थात लगभग 4 वर्ष की लम्बी अवधि उपरान्त भी प्रार्थी पक्ष की ओर से न्यायाधिकरण में किसी का उपस्थित नहीं होना, अपने प्रकरण के प्रति कोई अभिरुचि नहीं रखते हुए उनकी उदासीनता को ही दर्शाता है और ऐसे में न्यायाधिकरण के समक्ष अप्रार्थी पक्ष की बहस अन्तिम सुने जाने के अतिरिक्त अन्य कोई विकल्प शेष नहीं रहता है। अतः अप्रार्थी पक्ष की बहस सुनी गयी तथा पत्रावली का अवलोकन किया गया।

7. प्रार्थी का यह मामला रहा है कि उसने अप्रार्थी के यहाँ दिनांक 4/4/90 से 1/6/91 तक की नियोजनावधि में ग्रीष्मपानी वाले के पद पर कार्यरत रहते हुए 142 दिन तक कार्य पूर्ण कर लिया था तथा नियमानुसार दो साल तक लगातार 120 दिन कार्य कर लेने से वह अस्थायी का दर्जा प्राप्त करने का अधिकारी हो गया है, किन्तु उसकी ओर से साक्ष्य में प्रस्तुत शपथ-पत्र में स्वयं की उक्त पद पर भर्ती होने की तिथि 5/4/86 होना व्यक्त किया गया है व जिरह में भी इसी प्रकार का कथन रहा है कि वह प्रतिपक्षी रेलवे में 5/4/86 को सर्वप्रथम नियोजित हुआ था जोकि ग्रीष्मकालीन पानी वाले में भर्ती हुआ था। उसका जिरह में भी यह स्पष्ट कथन रहा है कि मुझे यह याद नहीं कि सन् 90 व 91 में मेरे द्वारा कितने-कितने दिवस काम किया गया है। इस प्रकार स्वयं प्रार्थी के अपने क्लेम स्टेटमेन्ट व शपथ-पत्र तथा उस पर हुई जिरह में अप्रार्थी के यहाँ नियुक्ति तिथि में विरोधाभाषी कथन रहे हैं तथा वह यह भी सुनिश्चित रूप से बताने में असमर्थ रहा है कि उसके द्वारा अप्रार्थी के यहाँ सन् 90 व 91 में कितने-कितने दिवस कार्य किया गया है। इसके विपरीत अप्रार्थी पक्ष की ओर से प्रस्तुत साक्षी अजीजुद्दीन का अपने शपथ-पत्र में, जवाब में वर्णित तथ्यों की ही पुष्टि करते हुए कथन रहा है कि प्रार्थी द्वारा उनके यहाँ नियोजनावधि में विभिन्न सत्रों में काम किया गया है जो अवधि के अन्तराल में प्रार्थी तीन से अधिक अनाधिकृत रूप में अनुपस्थित रहा है। उसका जिरह में यह स्पष्ट कथन रहा है कि वैकि प्रार्थी श्रमिक ने सेवा नियुक्ति तारीख से सेवा में 120 दिन लगातार काम नहीं किया है इसलिए वह टेम्परेरी स्टेट्स प्राप्त करने का अधिकारी नहीं है। अप्रार्थी की ओर से प्रलेखीय साक्ष्य में एनेक्सर आर 1 प्रस्तुत कर प्रदर्श एम.1 के रूप में प्रदर्शित करवाया गया है जिसमें भी यहीं प्रावधित रहा है कि ग्रीष्मपानी वाला व्यक्ति अपनी नियुक्ति तिथि से दो वर्ष की सेवा अवधि में लगातार 120 दिन कार्यरत रहने पर ही अस्थाई दर्जा प्राप्त करने का अधिकारी माने जाने योग्य है।

8. इस प्रकार अप्रार्थी पक्ष की ओर से उपलब्ध साक्ष्य के मुकाबले प्रार्थी श्रमिक अपनी मौखिक व प्रलेखीय साक्ष्य से यह सिद्ध करने में असफल रहा है कि उसने अप्रार्थी के यहाँ अपनी नियुक्ति तिथि से दो वर्ष की सेवा अवधि में निरन्तर 120 दिन कार्य किये जाने के तथ्य को प्रमाणित करने में असफल रहा है, अतः वह अप्रार्थी नियोजक से अस्थाई दर्जा या अन्य कोई भी अनुतोष प्राप्त करने का अधिकारी नहीं है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासांगिक आदेश दिनांक 5/1/1996 के जरिये सम्प्रेषित निर्देश/रेफेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि प्रार्थी श्रमिक मोहनलाल, अप्रार्थी नियोजक के यहाँ अपनी नियुक्ति तिथि से दो वर्ष की सेवा अवधि में निरन्तर 120 दिन कार्य किये जाने के तथ्य को प्रमाणित करने में असफल रहा है, अतः वह अप्रार्थी नियोजक से अस्थाई दर्जा या अन्य कोई भी अनुतोष प्राप्त करने का अधिकारी नहीं है।

जगमोहन शर्मा, न्यायाधीश

नई दिल्ली, 19 जून, 2017

का.आ. 1525.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 115/12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/42/2012-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th June, 2017

S.O. 1525.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 115/12) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 19.06.2017.

[No. L-12012/42/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/115/12

Shri Ratanlal Kachhi,
S/o Lalli Kachhi, H.No.367, Bilhari,
Mandla Road, Jabalpur (MP)

...Workman

Versus

Assistant General Manager,
State Bank of India, Admn. Office,
Vijay Nagar, Jabalpur

Dy.General Manager,
State Bank of India,
NCM, Net work-I, Administrative Office,
Raipur

...Managements

AWARD

Passed on this 12th day of April

1. As per letter dated 19-10-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/42/2012-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of India, Jabalpur in imposing the penalty of compulsory retirement w.e.f. 24-10-09 upon Shri Ratanlal Kachhi, Ex-Guard is legal and justified? To what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of Ist party workman is that he had retired in February 2001 from post of Naik. In April 2004, he was appointed as Bank guard in 2nd party Bank. It is alleged on 18-7-07, Manohar cashier raised alarm that Rs.43,734 was removed from his drawer involving the workman. Said incident is alleged between 5 to 5.30 PM. Shri Mahaveer Mor had come to the branch and submitted the said amount to Mr. Manohar in Bank. The authorities did not mention about shortage of any amounts received from Mahaveer. Bank Authorities shown proper accounts, any shortage was not shown in bank account. The incident was not reported to police on 18-7-07 rather it was reported to police station Katangi on 20-7-07.

3. Ist party further submits that 2nd party No.3 issued charge sheet to him on 24-4-08. His clarification was called within 7 days. That workman replied to charge sheet denying the charges against him. He also specifically denies charges about misuse of cheque related to account of Shri Manohar. That management did not agree with his reply. Shri S.K.Sarkar was appointed as inquiry officer and Shri P.K.Singh as management representative. Workman was

allowed defence representative from the Union. Enquiry was started. Statements of 8 witnesses were recorded. Workman examined 3 witnesses in his defence and documentary evidence was produced by him. Workman reiterates that from evidence of management's witnesses and documentary evidence, charges alleged against him cannot be proved. That Punchnama w.r.t. depositing amount by Mahaveer was not drawn. Enquiry Officer submitted his report on 18-4-10. Incidentally Ist party workman had also pleaded that he requested time for submitting written brief. His request was declined. He was directed to submit Enquiry Report was sent to him as per letter dated 20-5-09 directing him to submit reply within 7 days. It is alleged that the provisions of Chapter-11 of Discipline in Bank reference book on staff member is not complied by Enquiry Officer. Written submissions submitted by the parties was not considered by Enquiry Officer while submitting his report. Written defence of workman was ignored. Enquiry Officer did not give reasons for his findings. Report of Enquiry Officer was conjuncture and surmises. That showcause notice was issued to him ignoring his reply. Punishment of dismissal was imposed against him on 30-6-09. Ist party workman contends that his service record was excellent. He was not given proper opportunity for his defence. He was not allowed personal hearing in appeal preferred by him. The appellate authority mechanically held that enquiry was conducted under the rules. Order of punishment of dismissal was modified to removal from service with superannuation benefits. Workman not completed 10 years service. He cannot get the benefit of appellate order. on such ground, workman prays for setting aside order of removal from service and prays for his reinstatement with backwages.

4. 2nd party filed Written Statement opposing claim of Ist party workman. 2nd party submits that punishment of dismissal of workman was imposed on 30-6-09. Vide order dated 24-10-09, Appellate Authority modified punishment of removal from service to superannuation benefits. Punishment of compulsory retirement was contested by workman is incorrect. 2nd party reiterates that on 18-7-07, Ist party workman unauthorisely entered cash department of the Bank around 5.30 PM. Workman unauthorisely taken cash of Rs.43734 from cash drawer and hurriedly went out of branch premises. The cashier asked him to stop. Bank guard at present called workman. However he ignored their calling. The cashier after checking drawer found cash missing. One Puja Jain residing in the house in front of the branch seen workman hiding something in the said heap near the branch office. Said Puja informed Mahaveer Prasad about it. Mahaveer was landlord of the Bank residing at Ist floor. Shri Mahaveer Prasad informed about incident to branch Manager then amount was recovered from sand heap. Workman did not appear in the Bank for duty in the night. The incident was reported to police on 20-7-07.

5. 2nd party further submits that workman unlawfully obtained cheque leaf No. 690082 which was issued to Manohar workman has issued cheque to one Yogendra Mishra of Rs.5000/- . The cheque was presented by Yogendra Singh in Satpura KG Bank. Said cheque was sent for clearance to the Katangi branch. Cheque was returned with endorsement with fresh compliance. That cheque book of the concerned series was not issued to depositor. 2nd party has reproduced charges alleged against workman. Shri S.K.Sarkar was appointed as Enquiry Officer, Shri P.K.Singh as Presenting Officer. Enquiry was conducted on various dates. Workman was allowed opportunity for his defence. Enquiry Officer submitted his report on 12-5-09 holding charges against workman were proved. Enquiry Report was forwarded to Ist party on 20-5-09. Workman submitted his explanation. Disciplinary Authority after issuing showcause notice for proposed punishment of dismissal from service and considering reply submitted by workman punishment of dismissal was imposed. The appellate authority modified order of dismissal of workman to removal from service with superannuation benefit. 2nd party has reiterated about charge sheet issued to workman. The corrigendum of chargesheet was issued on 27-10-08 w.r.t. typing mistakes. The amount was recovered, there was no shortage in cash at the time of closure of accounts. It is reiterated that from evidence of Miss Puja Jain and other witnesses, charges against workman are proved workman was allowed full opportunity for his defence. The order of removal from service is modified by Appellate Authority is proper. 2nd party submits that claim of workman cannot be allowed.

6. On 3-6-16, counsel for Ist party submitted that legality of enquiry is not pressed by Ist party. Enquiry conducted against workman be deemed proper and legal. Only legality of order of punishment was to be decided.

7. Considering pleadings on record and order dated 3-6-16, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings?	Only charge No.1 alleged against workman is proved. Charge No.2 is not proved.
(ii) Whether the punishment of removal from service with superannuation benefit imposed against workman is proper and legal?	In Affirmative
(iii) If so, to what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

8. The documents produced by workman Exhibit W-1 to 21 are admitted by management. Chargesheet is produced at Exhibit W-6. Charge against workman pertains to on 18-7-07, while workman was on duty in the branch around 5.30PM, he had unauthorisely entered in cash cabin and taken amount of cash of Rs.43714. corrigendum was issued correcting amount to Rs. 43734. Charge No.2 pertains to Ist party workman working as Head messenger in the branch issued cheque No. 690082 and issued cheque against his Account No. 119009406 in favour of Yogendra Mishra on 7-7-07. Said cheque was received for clearance to the Katangi branch on 3-8-07. Cheque was returned for insufficient amount. The question remains for my consideration is whether the above charges alleged against workman are proved from evidence in Enquiry Proceedings. Enquiry Proceedings is produced at Exhibit W-12 statements of 8 witnesses of the management were recorded. Evidence of management's witnesses Puja Jain and Mahaveer is clear that Puja had seen workman concealing something in heap of sand while she was standing at balcony residing in house in front of the Bank. She narrated about it to Shri Mahaveer Jain. Evidence of Mahaveer is clear that after Puja narrated abut workman concealing something in sand heap, he had gone to the sand and recovered cash. He taken said amount to the Bank and submitted before cashier Mr. Nawra. The evidence of other witnesses Branch Manager S.K.Imnati-witness No.8, S.K.Verma- witness No.3, Dashrath prasad Tiwari witness No.4 corroborated evidence of Puja and Mahaveer Prasad. However in their cross examination have stated they have not seen workman concealing cash in sand heap. Witness cashier Narnaware and Manager S.K.Singh, Imnati in their statements have stated that workman had entered cash cabin. Cashier Narnaware after returning from other work checked his drawer and found cash was missing. Evidence in cross examination of Mahaveer and Puja Jain have stated the distance. The evidence of defence witnesses doesnot render evidence of Mahaveer Prasad and Puja unreliable. The evidence on record clearly shows that on 18-7-07, after the cash was received back from Mahaveer, Account had tallied, Bank has not suffered loss. Evidence in Enquiry Proceedings is sufficient to establish charge No.1 against workman. Re-appreciation of evidence is not permissible while exercising powers of judicial review under 11-A of ID Act.

9. W.r.t. charge No.2, management's witness No.3 S.K.Verma says cheque No. 690076 to 690100 was issued in name of Manohar Deshmukh. Cheque No. 690082 for Rs.5000 was issued with signature of workman. The amount was received for clearance. Payment of said cheque was stopped and cheque was returned back. In his cross, said witness says cheque No. 690082 for Rs.5000 was presented for clearance. Said cheque was issued in name of Shri Yogendra Mishra. On 7-8-07, Branch Manager returned back to his depositor. Management's witness Manohar Deshkuch in his cross says he had not received said cheque. That workman had returned amount of Rs.5000 to Shri Yogendra Mishra., He had torned the cheque. The cheque was not produced in Enquiry Proceeidngs. Therefore who was author of the cheque , who had signed on cheque, from which account the cheque was issued could not be established. The evidence in Enquiry Proceedings cannot establish Charge No.2. As discussed above, evidence in Enquiry Proceedings established only Charge No.1. Charge No. 2 is not established against workman. Accordingly I record my finding in Point No.1

10. Point No.2- As per my finding in Point No.1 charge No.1 alleged against workman is established. Charge No.2 is not established. Charge No.1 proved against workman pertains to taking amount of Rs.43734 from drawer of the cashier is of serious nature. The amount was recovered from sand heap and returned by Mahaveer after witness Puja Jain told him workman concealing something in said. The amount was received in the Bank. Bank did not suffer loss. The incident was reported to police on 20-7-07 after 3 days. It cannot dilute gravity of the charge proved against workman. Punishment of dismissal imposed against workman was modified in appeal to removal from service with retiral benefits. Considering the gravity to charge No.1 proved against workman, interference in the punishment is not justified.

11. Ist party workman has filed affidavit of his evidence narrating whole incident, when legality of enquiry is not disputed, evidence of Ist party regarding proof of the charges cannot be considered in view of proviso of Section 11-A of ID Act. Ist party workman was retired ex-serviceman. He had not completed 10 year service in the branch.

12. Workman claimed that he would not get benefit of the order passed in appeal. On the point , learned counsel for 2nd party relies on ratio held in case between-

State Bank of India and another versus Bela Bagchi and others reported in 200597)SCC-435. In para-15, their Lordship observed that Bank officer is required to exercise higher standard of honesty and integrity. The very discipline of an organization more particularly a bank is dependent upon each of its offices and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct of serious nature. The plea about absence of loss is also sans substance.

Reliance is also placed on case between Divisional Controller, Karnataka State Road Transport Corporation versus M.G.Vittal Rao reported in 2012(1)SCC-442. Their Lordship in Para 27 of the judgment observed this Court repelled the contention that even if by misconduct of employee employer doesnot suffer any financial loss, he could be

removed from service in case of loss of confidence. In para-32, their Lordship held Disciplinary Authority imposed punishment of dismissal from service which cannot be disproportionate to delinquency.

In case between Managing Director, Balasahed Sesai Sahakari S.L.Limited versus Kashinath Ganapati Kambale reported in 2009(2)SCC-288. Their Lordship in Para 15 observed the Labour Court ordinarily should not interfere with the discretion exercised by the employer unless the same is found to be inconsistent with the provisions of a statute or otherwise perverse or unjust.

In case between UP State Road Transport Corporation versus Nanhe Lal Kushwaha reported in 2009(8)SCC-772. In para-7, their Lordship held ordinarily the discretion exercised by the employer should not be interfered with. In para 10 , their Lordship observed misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity the highest degree of integrity and trustworthiness is a must and unexceptionable.

13. Considering the Charge No.1 found proved against Ist party, punishment of removal with superannuation benefit does not call for interference. For above reasons, I record my finding in Point No.2 in Affirmative.

14. In the result, award is passed as under:-

- (1) Action of the management of State Bank of India, Jabalpur in imposing the penalty of compulsory retirement w.e.f. 24-10-09 upon Shri Ratanlal Kachhi, Ex-Guard is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जून, 2017

का.आ. 1526.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 16/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.06.2017 को प्राप्त हुआ था।

[सं. एल-41012/57/2005-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th June, 2017

S.O. 1526.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 19.06.2017.

[No. L-41012/57/2005-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/16/2007

Shri Santosh Kumar Shrivastava
S/o Shri Navranglal
R/o Q.No.125, Civil Lines,
Maharani Laxmi Bai Ward,
Ward No.27, Katni (MP)

...Workman

Versus

Divisional Railway Manager,
Central Railway,
Jabalpur

...Management

AWARD

Passed on this 11th day of April 2017

1. As per letter dated 9-1-2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/57/2005-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Divisional Railway Manager, West Central Railway, Jabalpur MP in terminating the services of Shri Santosh Kumar Shrivastava w.e.f. 24-6-82 is justified or not? If not, what relief he is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/3. Case of Ist party workman is that he was employed as regular khalasi in CNW NKJ of the 2nd party management. He was engaged in rail service on 13-6-78 as regular employee. On 24-6-82, while he was on duty working in rippit, one piece of iron injured his left eye. He was declared unfit for job as CNW Khalasi. In medical examination, he had passed NC-II. Instead he repeatedly approached management for alternative job in C-II category. He was not provided light job. Nothing was heard from the management. He raised dispute before ALC, failure report was submitted to the Ministry of Labour on 30-3-05. Ministry had refused to make reference. As per directions in Writ Petition No. 13340/2006 by Hon'ble High Court, the dispute has been referred for adjudication. Workman reiterates that he had suffered injury on duty. After medical examination, he had passed in C-II. He prays for his reinstatement with consequential benefits.

3. 2nd party management filed Written Statement opposing claim of workman at Page 7/1 to 7/4. 2nd party submits that services of workman were terminated from 24-6-82. Dispute is raised after lapse of 23 years is not tenable. The reference is made after directions issued by Hon'ble High Court in Writ Petition 13340/2006. The dispute is highly belated. 2nd party refers to ratio held in certain cases by Apex Court. 2nd party further submits that Ist party workman was initially engaged as substitute Khalasi for the period 4-12-72 to 31-12-75 after selection in screening in 1976, he was appointed as diesel cleaner from 1-1-76 and worked till 3-7-76. Workman was not medically examined to ascertain his fitness for employment. Workman was sent for medical examination in June 1976. He was found unfit for B-I employment therefore his services were terminated. That as a matter of policy, Railways administration decided to recruit those persons earlier engaged in casual service. Applications were invited from such persons having casual service card as proof of their engagement by Railway. Workman had casual service card for his casual engagement as substitute Khalasi for the period 4-2-72 to 31-12-75. In light of said casual service card, workman was selected as C&W Khalasi. Workman did not disclose that he was declared medically unfit therefore his services were terminated. Workman was appointed as CWS NKJ with specific instructions to get him medically examined in B-1 within 20 days. However workman didnot make himself available for medical examination for the reasons he knew. He was unfit to perform the job. He was already found unfit in medical examination.

4. It is further submitted that workman had suffered minor injury on 24-6-82. He proceeded on medical leave. After returning on duty, workman was directed to get medically examined on 14-7-82. On his medical examination, workman was found unfit for B-I, B-II and C-I. as workman was found unfit, his services were found unfit, his services were terminated on medical ground. The dispute raised after 23 years is not tenable. Workman had concealed fact of medically unfit in B-I. his services were terminated on 4-7-76 on medical ground. Workman was offered appointment during ex-casual recruitment on 30-6-78 as Khalasi & CNW NKJ. It is reiterated as workman was found medically unfit, his services were terminated on medical ground in July 1982. Workman had suffered minor injuries, he was provided medical treatment on medical ground. His services were terminated as alternate employment claimed by workman, sanctioned post was not available. Workman could not be provided alternate job. Workman committed gross misconduct of concealing fact. He was declared unfit in 1976 on his medical examination 2nd party prays for rejection of claim.

5. Ist party filed rejoinder reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the dispute under reference is highly belated and not tenable?	Dispute under reference is highly belated is not tenable.
(ii) Whether the action of the management of Divisional Railway Manager, West Central Railway, Jabalpur MP in terminating the services	In Affirmative

of Shri Santosh Kumar Shrivastava w.e.f. 24-6-82 is justified or not?	
(iii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. Point No.1,2- As per pleading in statement of claim, Ist party workman was terminated on 24-6-82, dispute is raised as per direction issued by Hon'ble High Court in Writ Petition. Order of reference dated 9-1-07. The dispute is raised after lapse of about 25 years. Ist party workman in his affidavit of evidence has stated that on 24-6-82, he was working on job of cutting rippit. He suffered injury to his left eye. He had passed medical examination in C-II category. He was not provided alternate job. Fitness certificate dated 27-11-82 was produced by him. In his cross examination, workman says he has failed 8th standard. He was working as substitute khalasi from 4-2-72 to 31-12-75. Without any screening, he was sent for working as diesel cleaner. He was not sent for medical examination. From 30-6-78, he was again appointed. He was working continuously till 24-6-82. He was found fit in C-II and unfit in B-I, B-II. On 22-11-82, he was declared fit in C-II. He received medical certificate. He was appointed on the basis of service card when there were vacancies. After his re-appointment, he was not asked about medical certificate C-II. He suffered injury. He was not admitted in hospital. He received treatment for 2-4 months. He did not receive wages for said period. He did not complain about non-payment of wages. He denies that he was granted leave for period of his treatment and wages were paid to him.

8. Management's witness Ram Prasad filed affidavit supporting contentions of management in Written statement. That after his selection on post of CNW Khalasi, workman had not appeared for medical examination for posting of B-I category. Workman knew that he was medically unfit for B-I category. On 24-6-82, workman suffered mining injury. He proceeded on medical leave. After resuming duty, workman had undergone medical examination and found unfit for B-I, B-II, C-I category. Therefore workman was not deployed in this category. There was no vacancy for alternate employment. Workman concealed the facts that he was medically unfit. In his cross, management's witness says in 1972, he was not working in loco. He was unable to tell on what basis he has stated in affidavit workman suffered minor injury in 1982. In 1982, he was not working in CNW. Workman was not required employee. He was not provided job in C-II Category. If workman would have been regular employee, C-II category would have been allowed to him.

9. The documents produced Exhibit M-1, M-2 pertains to the job B-I, B-II, C-I category. The employees declared unfit. In application Exhibit M-2, workman has claimed that he was found fit in C-II category. In Exhibit M-3, workman has claimed that he was found fit in C-II Category. Exhibit M-3 shows that personal interview was taken with Sr. DPO and ADRM.

10. As per Exhibit W-1, workman was informed that there was no vacancy alternate job could not be provided to him. Exhibit W-3,4 are copy of failure report. Exhibit W-5 is copy of Writ Petition. The dispute is raised after 25 years. On the point, Shri A.K.Shashi relies on ratio held in case between

Nedungadi Bank Ltd. versus K.P.Madhavankutty and others reported in 2000-I-LLJ-561. Their Lordship held power to make reference to achieve above purpose, cannot be exercised at any time after delay of 7 years and there being no industrial dispute existing or apprehended.

Reliance is also placed in case between UP State Electricity Board and another versus Presiding Officer, Labour Court Kanpur reported in 1998-LAB-I.C.1702. their Lordship dealing with Section 11-A held raising of industrial dispute after delay of 8 years of passing that order. No relief can be granted to such workman even if alleged termination of his services was invalid.

In case between Assistant Executive Engineer, Karnataka versus Shivalinga reported in 2002-I-LLJ-457. Their Lordship dealing with delay and latches held delay of more than 9 years in approaching Labour Officer. In cases of serious dispute as to relationship of employer and employee, records of employer being relevant would come a way of maintenance of same. Situation of such nature renders claim stale. Copy of award in R/2/92 is also submitted for perusal.

Reliance is also placed in case between Karnataka State Road Transport Corporation and another versus S.G.Kotturappa and another reported in 2005-II-LLJ-161. The ratio held in the case pertains to termination of badly workers. Ratio cannot be applied to case at hand as ratio does not cover the controversy between parties.

11. From ratio held in above cited cases, the dispute raised after about 25 years is highly belated and not tenable. The claim of workman for reinstatement cannot be allowed. For above reasons, I record my finding in Point No.1 in Negative and Point No.2 in Affirmative

12. In the result, award is passed as under:-

- (1) The dispute under reference is highly belated.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जून, 2017

का.आ. 1527.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. II, दिल्ली के पंचाट (संदर्भ संख्या 50/11) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/46/2011-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th June, 2017

S.O. 1527.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 19.06.2017.

[No. L-12012/46/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE SH. HARBANS KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI

ID.No. 50/11

Smt. Indirawati,
W/o Late Sh. Ranbir Singh,
R/o D- 166(F), Sector -11,
Ghaziabad (UP).

Versus

The Dy. General Manager,
State Bank of India,
Zonal Office, I, II
Parliament Street,
New Delhi-110001.

AWARD

The Central Government in the Ministry of Labour vide Letter No.L-12012/46/2011 -IR(B-I) dated 20.06.2011 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of State Bank of India, New Delhi, in termination the services of Smt. Indirawati, Ex-Assistant, w.e.f 19.12.2005. is legal and justified? To what relief the workman is entitled ?

On 8.7.2011 reference was received in this Tribunal. Which was register as I.D No.50/2011 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 18.11.2011 workman filed claim statement before this Tribunal. Wherein she prayed as follows:-

- A) The workman most respectfully prays that this Hon'ble Court may be pleased set aside the order dated 19.12.2005 of the removal from service being major penalty which effected the livelihood of the family of the petitioner.
- B) The enquiry conducted by the respondent without providing the charge sheeted documents and also not called the main witness who had complained against the petitioner which was totally against the natural justice and humanitarian grounds.
- C) The petitioner may be allowed to join the service from the date of removal and benefits under the rules may also be awarded in favour of the petitioner as the removal was totally illegal and against the natural justice.
- D) Any other compensation may be given to the petitioner as the Hon'ble Court seems to be justified in the present case.

Management filed written statement on 4.3.2014. Wherein management prayed as follows:-

"It is therefore prayed that the present claim be dismissed with compensatory costs to the respondents.

Against written statement workman filed rejoinder. Wherein she re-affirmed the contents of claim statement.

On 8.4.2013 following issues were framed:-

1. Whether enquiry conducted by the bank against the claimant was just, fair and proper?
2. Whether punishment of removal from service commensurate to the misconduct of the claimant?
3. As in terms of reference.

And 13.05.2013 was fixed for workman evidence.

Workman in support of her case filed her affidavit on 25.09.2013 Copy of which supplied to Ld. A/R for the management.

Which was tendered by workman as WW1 and she was cross-examined & her cross-examination was concluded.

Workman closed her evidence.

Management in support of its case produce MW1 Sh. Triloki Nath on the point of disposal of preliminary issue no. 1 framed by my Ld. Predecessor on 13.05.2013.

Thereafter I heard the arguments of Ld.A/R's for the workman and perused written arguments filed by Ld. A/R for the management to dispose of issue No. 1 as Preliminary Issue.

I perused the pleadings and evidence of parties on record as well as written arguments of management. Perusal of evidence of WW1 Smt. Indirawati makes it crystal clear that nothing could be extracted out in her cross-examination which may be favorable to management.

Perusal of cross-examination of MW1 Sh. Triloki Nath makes it crystal clear that he admitted as follows:-

"My affidavit is based on documents. Which I have exhibited."

Moreover he is neither Enquiry Officer nor presenting officer nor was present during enquiry. So his evidence cannot be treated as primary evidence on the point of enquiry. Moreover management in-compliance of previous order passed by this Tribunal has not filed original file of enquiry. So this Tribunal could not peruse the file of enquiry. Although points raised on behalf of Ld. A/R for the workman could be best appreciated after perusal of original file of enquiry. So non-production of enquiry file by management compell to this Tribunal to draw an adverse inference against the management. Which is accordingly drawn on the basis of provision of section 114(g) of Indian Evidence Act.

On the basis of aforesaid discussion I decided preliminary issue No. 1 relating to enquiry in favour of workman Smt. Indirawati and against management of State Bank of India on 2.5.2016 but I afforded opportunity to management of State Bank of India to prove misconduct of workman and fixed 24.05.2016 for management evidence.

To prove misconduct of workman Smt. Indirawati, management of S.B.I. could produce following witness:-

Only MW2 Sh. Kanhiya Lal, Manager, S.B.I.

No evidence in-rebuttal has been adduced on behalf of workman Smt. Indirawati.

Thereafter workman filed written arguments . Where-in workman stated as follows:-

1. The respondent issued 2 charge sheets (1) **21.07.2003 Ann.P-15** at **page-38** (2) **4.10.2004 Ann.P-33** at **page-60** of complaint when M/s IPG Co. had written a letter on **15.01.2004** (Ann.P-23 at page-46 of complaint about cash voucher dated **8.7.2003 (Ann.P-7) Page-28** why so much delayed caused in the matter which create a doubt that some conspiracy was going on against the workman.

The respondent in their written statement stated that workman was suspended by the disciplinary authority w.e.f.21.7.2003. a charge sheet set out containing 5 charges was served upon. As per CHAPTER-XIX (Page-68) Byparte settlement book Disciplinary Action & procedure: 19.9. “A workman found guilty of misconduct, whether gross or minor, shall not be given more than one punishment in respect of any charge. Hence the charge sheet itself illegal.

2. It appears from **page-25** of the departmental enquiry submitted by the respondent along-with written statement on 29.12.2011 recorded by the E.O. that D.R. to EO that” Sir, I wish to get the copy of FIR “It shows that the management had lodged a complaint to Police for the loss of 1 lac, which was not provided to workman by the EP. The acts of E.O. was arbitrary not dealing fairly during the domestic enquiry. Hence the enquiry was bias.

It appears that management had not persuaded the matter with police authority deliberately because there was involvement of the then manager and Special Assistant those were fully responsible for the loss of Rs. 1 lac because the main liability was on the Special Assistant.

If there was a police complaint made by the management, the management should have waited till the final report was given by the management, the management should have waited till the final report was given by the police. The respondent had violated the rule made by **Desai Award in para-18.20 (page-341)**. If a person acquitted by the police the benefits of doubt is given to the workman and paid pay and allowances as the management deem fit proper and the period of absence is supposed to be treated on duty.

Enquiry was based on bias:-

3. Cash voucher dated 8.07.2003 (Ann.P-7) at page-28 was destroyed by the then Manager Mr. R.K. Bansal which is evident from the application submitted by the workman to the management on dated 24.01.2004 (**Ann.P-25**) at **page-48** of complaint. The Enquiry Officer did not ask the management to produce both the parts of the cash vouchers because he had known that one of the original cash voucher was not available as already destroyed by Mr. R.K. Bansal, he then manager.

If there was short balance on dated , Special Assistant/Head Cashier were accountable for the loss of money. Since they remained silent on the very day, it proves that there was no loss of money on the part of workman and created a conspiracy against the workman.

As per service conditions of bank employees, **Special Assistant** is accountable and responsible for running of the department/section under him and his duties involve looking after and checking the work of other clerks and sub staff and include passing independently cash instrument upto Rs. 1,50,000=00. Passing include verification of signature to the correctness .of the endorsement on the instrument, passing of authenticated credit voucher/entries and for verifying authenticated vouchers in the ledgers, books. These are duties of special Assistant.

Since Mr.R.P. Bhutani, was Special Assistant who was fully responsible for the verification and entries in the ledger, neither the management nor the enquiry officer asked to the management about the original cash vouchers dated 08.07.2003 one of bank counter which was destroyed by the then manager Mr.R.K. Bansal as per complained by the workman on dated **24.01.2004 (Ann.P-25) at Page-48 of complaint as evident**. It proves that there was no another part of the voucher given to Malkiat Singh and the respondent also to produced this witness either in the enquiry or in the tribunal. **As such failed to prove the financial loss of the bank.**

4. The E.O. deliberately mentioned at page-11 of Departmental Enquiry dated 14.12.2004 submitted by the management with written statement on behalf of the respondent stated that “I have verified the authenticity of the documents submitted by the PO **except** 3.P6,P7,P8,P12. **PO is requested to provide evidence to establish their authenticity.**

PO was advised to arrange to establish their authenticity of the above documents in the next date of proceeding the act of the EO was arbitrary and based on bias **exempting P3,P6,P7,P8,P12. To establish the authenticity of the documents** by the management. As the authenticity is proved only by the witnesses in the domestic enquiry against the charged employee. **The acts of the Enquiry officer was arbitrary and based on bias favoring the management.**

5. It seems from the departmental proceeding at page-14,15,16 that charges were not established as the documents were not authenticated by the witness as required under rule for conducting the fair domestic enquiry as there was no signature of PW-1 in the domestic proceedings and as such it s presumed that **no evidence was led in the enquiry**. Not

only this the opposite party not produced the original documents of the domestic enquiry in-spite of ordered by this tribunal.

In Chapter XXI para-4 stated that matter in connection with disciplinary action dealt with chapter XVIII in the ambit of the term of reference. There should be evidence or no abuse of disciplinary powers set out in para-521 (1)(B) of the Shatri Award. (Page- 357)

6. At page-22 of Deptt. Enquiry the PO had said that I will produce my next witness Mr. Malkiat Singh 14.06.2005. The PO Stated at page-24 that “My witness has not come because of his personnel reason, hence I am closing my case.” It proves that there was no evidence which could prove the loss of 1 lac on the part of the workman and the entire enquiry found to be futile.

1974 SLR Union of India V. B.K.Dutta held: constitution of India, Article 311- Departmental enquiry – Conclusion arrived at by the Enquiry officer and accepted by Disciplinary Authority Not supported by evidence – order of dismissal vitiated – Disciplinary Authority should consider the explanation given by officer and give reasons on his respect of conclusion.” (**para-20**)

It proves that the entire domestic enquiry was based on bias and without evidence, hence the charges were not proved in-spite of this the EO had given his enquiry report at page-1 to 7 (page-36 domestic enquiry) submitted with written statement by the management.

7. At **page-81A** (complaint) of deptt. Enquiry report the EO stated at page-4 that “PO did not produce the main witness sh. Malkiat Singh mentioned at sr.No.1 in the list of witnesses. Upto 7 dates fixed from 09.04.2005 to 14.06.2005 by EO” whereas his appearance was compulsory because Rs.1 lac was paid to him by Smt. Indrawati. Hence the destruction of Receipt voucher it was entered in the Receipt Scroll and after the payment of Rs.1 lac amounted to the payment of total amount of 3 cheques i.e. 1,16,354.55. Hence the question of the loss of Rs.1 lac to the Bank does not arise on the basis of the above facts and this charge also not proved since Malkait Singh had received payment and the original part of the cash voucher was destroyed by the then Manager which was well known by this witness.

The EO findings was totally illegal and arbitrary that prosecution submitted document No.P-2,P-3,P-5,P-7 & P-8 proved by WI-1 since there was no signature in the domestic enquiry at page-13,14 as such the charge cannot be said to be proved. The PW-1 was Special Assistant who was fully responsible for running of department/section for passing and verification up to and including Rs.1,50,000=00 and passing of authenticating the credit voucher.

The management had framed a false case against the workman, in fact the responsibilities were on the part of the then manager and Special Assistant.

MANAGEMENT FAILED TO PROVE THE AUTHENTICITY OF THE DOCUMENTS SUBMITTED BY MALKIAT SINGH AS STATED AT PAGE-5 AND 6 OF THE DOMESTIC ENQUIRY THROUGH WITNESSES AS THERE WAS NO EVIDENCE OF PROOF OF ATTENDING THE ENQUIRY PROCEEDING:-

1. Malkiat Singh 2. Ram Awadh 3. RP Bhutani 4. OP Nagpal 5. Bijendra Singh 6. P. C. Bhargawa.

Case Law:

1985(1) SLR M/S Bhiwani Textile Mills v. Kishan Chand (Punjab & Haryana) held: “Management failed in its attempt to justify dismissal – Management challenging, both the orders under Article 226 and 227 of the Constitution – held- the order of the Tribunal could not be challenged in writ petition based on no evidence” (**Para-3**).

It appears from the charge sheet dated 04.10.2004 Ann. P-30 (page-60 of petition) that payment of 3 cheques of Rs.1,16,354=55 was made to Malkiat Singh of the Company who had signed on Ann.P-8 (page-29). The main witness also not turned in the domestic enquiry. The cheques were passed and tokens were issued after verification by the cash officer as the clerk has no power to pass such a big amount. There was only reason that the entry could not be made in the cash register because the main cash voucher was destroyed by the then branch manager for which workman had complained at Ann.25 (page-48), the workman is not responsible for the same as there was clear cut conspiracy against the workman.

Ho-ever the management failed to produce 6 witnesses as mentioned in the list of witnesses at page -5-6 domestic enquiry authenticity of 21 documents and hence charges were not proved.

Case Law:

SLR 1978(1) Rajasthan High Court in the matter State v/s Danmal held:

In Para-12 “the impugned findings recorded by the Inquiry Officer are not supported by any evidence, the High Court in exercise of its writ jurisdiction would be justified in setting aside the said findings. The question, therefore

which falls for our decision is whether the **findings of the Inquiry officer** on charges Nos.1 and 2 are not sustainable as they were **based on no evidence.**

The management failed to prove the documents through the witnesses as no witness was present in the enquiry as there is no signatures in the enquiry proceedings and the authenticity of the documents were not proved. The management also failed to produce the original documents in-spite of order issued by this Hon'ble Tribunal.

Case Laws:

1984 SLR (2) M/S Bee Eng. Works v. State of Haryana held: A. "Industrial Disputes Act, 1947, Section 10(i) (C)- Award-Evidence – non – consideration of all material evidence –effect of – it is incumbent upon Labour Court to indicate all the material evidence on record supported by reasons in arriving at the conclusion- Non-consideration of reasons in arriving at the conclusion –Non – consideration of evidence vitiate the findings."

1992(1) SLR A.P.S.R.T.C. v. Sri Md. Masood (A.P) held: the **Supreme Court in Paragraph -38**, brought in by section 11-A is the power conferred on tribunal to alter the punishment imposed by an employer. In-spite of the fact that the Tribunal comes to conclusion that the misconduct or discharge is not justified, it can interfere with the same." **(Para-9)**

PRAYER:

In view of the above circumstances it is prayed that the respondent may please be directed to re-instate the workman from the date of termination with full wages **set-a siding** the staff award dated 31.10.2005 (**Ann.P-44**) at **page-76 and order dated 01.06.2006 (Ann.P-48)** with suitable relief being harassed by the management, as deem fit under the circumstances.

Case Law:

(1980) 4 SCC 443 Surendra Kumar v. Industrial Tribunal held "Labour and Service- Re-instatement –normally in cases of unjustified termination of services, workman are entitled to the relief of reinstatement with full back wages."

Management filed written arguments. Where-in management prayed as follows:-

1. The workman was charge sheeted vide charge sheet dated 04.10.2004 (Ann. P-33 filed by workman) for the charges enunciated therein. The charge sheet is Ex. M-1. The workman accepted the authenticity of the documents.
2. The workman accepted in her claim itself that she failed to incorporate the detail of notes of the three cheques Ex. PW1/1 and PW1/2 aggregating to Rs. 116354.55 in cash payment Register dated 8.3.2003.
3. She has further admitted that she did not enter the cash receipt of Rs. 1 lac received by her for credit to a/c. 0000551005 of IPGCL on 8.7.2003 before/after handing over counterfoil duly signed by her to the depositor. By her act, the Bank suffered a loss of Rs.1 lac. Ex. P-52 duly filed by the workman and admitted in her claim itself.
4. She did not sign the cash payment register at the end of 8.7.2003. The workman admitted in her claim that she closed the entry of cash receipt in cash payment Register. She admitted that she has not signed the same, meaning thereby that authenticity of the entries is not verified.
5. Admittedly she accepted cash of Rs. 20000/- and Rs. 5000/- from Sh. Ram Awadh, a customer on 16.7.2003 for depositing in saving Bank account No. 01190796297 of Sh. Ram Awadh and Sh. Ram Kumar respectively. She did not enter the two cash receipt scroll on 16.7.2003 before/after handing over the two counterfoils duly signed by her, to the customer. The complaint by the customer is Ex. P-11, admitted by the workman.

Tensing apprehension of her misdeed, she prepared two vouchers for Rs. 20000/- and Rs. 5000/- with her own handwriting and accounted for in branch books on 19.7.2003 for credit to s/a 01190792348 and 01190796247. Thus admittedly she retained the Bank's money in her personal custody from 16.7.2003 to 18.7.2003. She has admitted the same in her claim.

6. It has been proved in the departmental inquiry that the workman committed financial irregularities qua the accounts of the customers of the Bank and thus defrauded the components of the Bank. The workman has not rebutted the same in her cross.

7. The employees of the nationalized Banks are expected to maintain higher standards of morale, integrity and honesty. Commensurating to the gravity of proved misconducts, the workman was imposed the punishment of "Removal from service".

8. The workman has subjected the Bank to loss of integrity and reputation. She has perpetuated indiscipline and defrauded the Bank. He acts are harassment and stigma for the Bank. She has lost the faith of the Bank.

In the light of contentions and counter contentions mentioned in written arguments I perused the pleadings and evidence of management on the point of misconduct that is of MW2 Sh. Kanhaiya Lal. Perusal of which makes it crystal clear that in his affidavit he nowhere mentioned that he was remained present in all the proceedings of enquiry conducted against workman Smt. Indirawati. So his evidence appears to be based on documents available in management office. No other witness on behalf of management was produced by management to prove misconduct of Smt. Indirawati. Hence evidence of management is short of required, reliable and credible evidence to prove misconduct of workman Smt Indirawati.

Moreover rulings cited on behalf of management is not applicable in the instant case due to distinguishable facts.

In addition to it rulings cited on behalf of workman applies with full force in the instant case due to similarity of facts with the reported case.

On the basis of aforesaid discussion I am of considered view that punishment imposed on workman Smt. Indirawati is liable to be set-aside in want of evidence on the point of misconduct of workman Smt. Indirawati.

So action of the management of State Bank of India, New Delhi , in terminating the services of Smt. Indirawati Ex-Assistant , w.e.f. 19.12.2005 is not legal and justified. So aforesaid punishment is liable to be set-aside which is accordingly set-aside. Now it is to be looked into as to what relief workman Smt. Indirawati is entitled.

As imposed punishment on Smt. Indirawati, Ex-Assistant w.e.f 19.12.2005 has already been set-aside. Hence she is entitled to relief of reinstatement with full back wages.

In this background reference is liable to be decided in favour of workman and against management State Bank of India. Which is accordingly decided and claim statement of workman is allowed.

Award is accordingly passed.

Dated:-11.04.2017

HARBANSK KUMAR SAXENA, Presiding Officer

नई दिल्ली, 19 जून, 2017

का.आ. 1528.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 108/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.06.2017 को प्राप्त हुआ था।

[सं. एल-41012/44/2012-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th June, 2017

S.O. 1528.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 108/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 19.06.2017.

[No. L-41012/44/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/108/2012

Shri Sheikh Mubeen Khan,
Ward No.13, Behind Petrol Pump,
Junnardev,
Distt. Chhindwara (MP)

...Workman

Versus

Divisional Railway Manager,
Central Railway,
Nagpur

...Management

AWARD

Passed on this 11th day of May, 2017

1. As per letter dated 8-10-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-41012/44/2012-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Central Railway, Nagpur in not reinstating Shri Sheikh Mubeen Khan in service after his acquittal from the charges by the Special Railway Magistrate is legal and justified? To what relief the workman is entitled?”

2. Identical order of reference was received and matter was registered as R/117/12. Said reference is merged with present reference which is decided by common judgment.

3. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim. Case of workman is that he was appointed as casual khalasi on 1-1-48 by respondent No.3 which is not shown either in statement of claim or any order of reference subsequently he was engaged as substitute, laderman at Locoshed Junnardeo w.e.f. 1-4-94. His MRCL Number is 28. As per instructions of Railway Board case of workman was considered by management for regularization. He was referred to Medical Board for obtaining physical fitness certificate. Fitness certificate was issued on 8-11-85. That subsequently GRP registered case under Section 3-A of Railway Property Rules 1966 on 1-5-86. The allegations against workman pertain to one fish plate has been seized from him. He was arrested by GRP. Because of said incident, his services were terminated by order dated 15-8-86. That after prosecution in criminal case was conducted against him before Special Railway Magistrate Bhopal, he was acquitted. The prosecution failed to prove charges against workman. He was acquitted giving benefit of doubt. That after his acquittal by Railway Court, workman approached management claiming reinstatement, had also submitted representation to minister of Railway. Thereafter the authorities had directed to look into the matter. Railway Welfare Inspector had called record and documents from workman on 29-11-06 vide letter dated 7-12-06 reinstatement was denied to the workman on the ground that workman was working as substitute alderman and he was not permanent employee of Railway. Therefore cannot be reinstated.

4. Workman submitted representation on 28-12-06 to Sr. Personal Manager. As per letter dated 16-3-07, his representation was rejected on the ground that workman was acquitted by Railway Board Bhopal giving benefit of doubt. Reinstatement of workman was not possible. It is further submitted that Sr. Personnel Officer advised workman. That DRM Nagpur had issued circular calling application for casual labour working in Nagpur division with cut off date 21-3-98. As per letter dated 25-5-01, workman had not submitted his application. Sr. Personnel Officer further informed that process of regularization of casual labour have been closed therefore it was not possible to entertain his representation.

5. Ist party submits that he was implicated in false case by GRP. He was not involved in incident. Respondent No.3 issued certificate. The work of workman was found satisfactory and unblemished. Certificate was issued after termination of workman. After acquittal of workman in criminal case, 2nd party was bound to reinstate workman in service. Management instead of reinstating workman is taking shelter of its casual service. Management has considered case of Shri Sunil Kumar S/o Sundarlal for regularization. He was referred for medical examination to medical board for obtaining physical fitness certificate. Fitness certificate was issued on 8-11-85 in favour of workman as well as Sunil Kumar. Services of workman were terminated by order dated 15-8-86. Services of Shri Sunil Kumar were regularized vide order dated 29-1-90. Workman filed OA No.1072/112 in CAT. Vide order dated 12-02-13, workman was given liberty to pursue matter pending before this Tribunal. Ist party further pleaded that he had completed more than 240 days continuous service. He is covered under Section 25 B under ID Act. That workman under Section 2(s) of ID Act, establishment of 2nd party is covered as an industry under Section 2(j) of ID Act. That termination of his service amounts to retrenchment under Section 2(oo) of ID Act. Termination of his service is in violation of Section 25-F,G,N of ID Act and Rule 76,77 . that management violated Section 25 H of ID Act. On such ground, Ist party workman prays for his reinstatement on the post of substitute laderman with full backwages.

6. 2nd party management filed Written Statement opposing claim of workman. Preliminary objection is raised that Railway Administration is defined under Section 2(32) of Railway Act 1989. That 2 months notice under Section 80 CPC was not issued. Claim of Ist party suffers from non-joinder of necessary parties. That Respondent No.3 is not shown in the claim clause. Dispute is raised after lapse of more than 25 years is bared by limitation. The record is not available as matter is very old. Only DRM works is impleaded as party. Ist party has not supplied any documents in support of claim for regularization on the ground of fitness certificate issued by Medical Board. Even if it is assumed

that workman as working as MRCL, he was not a permanent employee. Casual labours engaged work in Railway. When there is no work, casual labours are not engaged. Casual labour cannot claim regularization in Railway. That medical examination of workman Sheikh Mobin Khan was conducted on 8-11-85. He failed to submit documents about his medical examination. On 16-9-85, workman was acquitted by Railway Magistrate. Workman did not file appeal against order of his termination. After lapse of 9 years of his acquittal, workman approached for reinstatement in service. Acquittal of workman as based on allowing benefits of doubts. Ist party has not supplied any documents. That Respondent No.3 is not impleaded as party in the matter. Ist party has not produced documents w.r.t. regularization of Sunil Kumar Sundarlal. Sunil Kumar Sundarlal was issued fitness certificate on 8-11-85. It is not possible to ascertain how and why Sunil Kumar was regularized on 29-1-90. Statements of workman are contradictory. Respondent No.2,3 pleaded in statement of claim are not impleaded as party. Workman has made false statement. The contentions of workman that he was continuously working for about 12 years has been denied. It is not possible that workman worked for 12 years during the period 1-1-84 to 15-8-86. It is reiterated that as matter is old, documents are not available. Ist party was not permanent employee of Railway. He was prosecuted for criminal offence. Such employee cannot be allowed to remain in Government Servant. On such contentions, 2nd party prays for rejection of claim.

7. Ist party filed rejoinder reiterating his contentions in statement of claim.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Central Railway, Nagpur in not reinstating Shri Sheikh Mubeen Khan in service after his acquittal from the charges by the Special Railway Magistrate is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

9. The term of reference is specific whether action of the management of Central Railway, Nagpur in not reinstating Shri Sheikh Mubeen Khan in service after his acquittal from the charges by the Special Railway Magistrate is legal. However in his statement of claim, workman has pleaded that he was continuously working from 1-1-84 till termination of his service on 15-8-86. That workman was acquitted in criminal case by Special Railway Magistrate on 16-9-97. Workman has also pleaded that he completed more than 240 days continuous service. His services are terminated in violation of Section 25-F,G,N , Rule 76, 77 of ID Act. The contentions of Ist party w.r.t. termination of his service in violation of Section 25-F,G,N Rule 76,77 appears beyond the terms of reference.

10. Workman filed affidavit of his evidence. In his affidavit of evidence, he has stated that on 13-10-78, he was appointed as Railway Casual Khalasi. On 1-1-84, he was posted as casual labour in loco shed. On 1-4-84, he was posted as lademan. His MRCL number is 28. He was referred for physical fitness examination to the Medical Board. Fitness certificate was issued to him on 8-11-85. He was prosecuted under Section 3 of Railway Property Act for the allegation that one fish plate was seized from him. That he was acquitted by Special Railway Magistrate on 16-9-97. His representation for reinstatement dated 29-11-06, 7-12-06 were not accepted. His representation dated 28-12-06 was rejected by Sr. Personnel Officer on 16-3-07. That one Sunil Kumar was regularized on 29-1-90 as pointman. That he had completed 7 years 9 months 15 days continuous service from 30-1-78 till 15-8-86. He completed more than 240 days continuous service during each of the year. After termination of service, he is unemployed, he was not served with termination notice. Retrenchment compensation was not paid to him. From evidence of workman, documents Exhibit W- to 8 are admitted in evidence.

11. In his cross examination, workman says he has passed 6th standard. Subsequently he failed 10th standard. He not produced documents about his date of birth. He claims ignorance who has overwritten his date of birth in Exhibit W-1 to 30-6-60. That his date of birth as recorded in pan card, ration card, those documents were not brought by him. He reaffirms that he was appointed in Railway in 1978. He denies that at the time of his first appointment, his age was 19 years. In 1984 he was transferred to loco shed, Junnardeo. As the document Article A-1 were referred to the witness, document is marked Exhibit W-9. In his further cross, workman says he was terminated from service on charge of theft. He was given copy of Exhibit W-7. He preferred appeal against said order. as per judgment Exhibit W-4, he was acquitted. After his acquittal, he submitted repeated letters for his reinstatement. He claims ignorance whether Railway had issued several notifications for regularization of casual labours.

12. Management's witness Tukaram Malpandey filed affidavit of his evidence. He is authorized by personal officer Vijay Kumar Panigrahi. That Sheikh Mobin Khan workman was terminated as criminal case was initiated against him.

Giving benefit of double special Railway Magistrate Bhopal acquitted workman on 16-9-97 that the post of casual labours are not available. Workman was apprehended committing theft of fish plate. Management's witness in his cross examination says he is not acquainted with workman. He is giving evidence as per record. Chargesheet was not issued to workman as Ist party was casual labour, termination notice was not issued to him, retrenchment compensation was not paid to him. As per record, workman was working in locoshed. Workman was working on steam engine filling coal for producing steam, maintenance of steam engine, work of pumping, operating in locoshed was done by workman. Management's witness was unable to tell whether in 1986, more than 500 employees were working in loco shed. Presently around 2000 employees are working in Nagpur Division. After Ist party workman was prosecuted in criminal case, he was disengaged. Management's witness was unable to tell whether workman completed more than 240 days continuous service.

13. As discussed above, term of reference pertains to legality of continuity of reinstatement to workman after his acquittal in criminal case. Evidence adduced by both parties w.r.t. termination of services of workman in violation of Section 25-F, G, N of ID Act needs no detailed discussion.

14. Workman filed document Exhibit W-1 shows his age 24 years, there is over writing in column of date of birth. His job is shown as casual fitter. The date of his engagement is shown 30-10-78, period of his working are shown 1979, 80, 81, 84. Exhibit W-2 shows Ist party workman was appointed as sub lademan was found physically fit. Said certified Exhibit W-2 was issued on 8-11-85. Exhibit W-3 shows his services were terminated on 5-8-86 as per reference letter dated 11-8-86. Letter dated 11-8-86 is not produced. Exhibit W-4 is copy of judgment. Workman was acquitted by Special Railway Magistrate Bhopal. The reasons are that the metal was not bearing plat produced before the Court was not bearing seal. Exhibit W-5 is letter dated 29-11-06 Welfare Inspector Amla had directed workman to produce documents pertaining to working certificate, work card, pass, PTO, Medical Card etc. Exhibit W-6 is issued by DRM, Nagpur informing workman that he may submit application for regularization as casual labor as per order dated 25-5-01. Exhibit W-7 is letter dated 16-3-07. Workman was informed that since process of regularization of casual labours have been closed in the decision, it was not possible to entertain his representation. Exhibit W-8 is copy of letter dated 3-7-88. Workman was informed that he was terminated on 5-8-86. Exhibit W-9 shows that workman as working as MRCL, Junnardeo and period is 1-1-84 to 15-8-86. His work during above period was unblemished. Evidence discussed above is clear that as workman was prosecuted in criminal case, his services were terminated workman has been acquitted by Special Railway Messenger, Bhopal vide judgment Exhibit W-4. Evidence shows that immediately workman not approached for his reinstatement. However documents shows workman had approached for reinstatement in the year 2006. His claim for reinstatement was rejected on the ground he was acquitted giving benefits of doubt that he was involved in criminal case. The evidence on record is further clear that even after acquittal of workman, chargesheet was not issued to him, no enquiry is conducted to prove any misconduct against him. Evidence of management is not explaining why after acquittal of workman, he was reinstated. The acquittal of workman by Special Railway Messenger is sufficient to hold that charges of theft alleged against workman are not proved. When charge is not proved against workman and his services were terminated vide Exhibit W-3, termination of Ist party workman on ground of alleged theft cannot be sustained. Therefore action of the management not reinstating Ist party workman after his acquittal of charges in criminal case is illegal. On above point, Learned counsel for Ist party Shri K.B.Singh relies on ratio held in case between-

Raj Kumar versus Director of Education and others reported in 2016(6)SCC-541. Ratio held in the case pertains to provisions under Section 25-F,C are mandatory.

Ratio held in case between Lal Mohammad and others versus Indian Railway Construction Co.Ltd and others reported in 1999-1-SCC-596. Ratio held pertains to retrenchment in violation of Section 25-F, 25-FFF, Chapter V-A of ID Act.

Considering the terms of reference, legality of denial of reinstatement to workman after his acquittal in criminal case, ratio in above case has no bearing to the controversy between parties. For above reasons, I record my finding in Point No.1 in Negative.

15. Point No.2- In view of my finding in Point No.1 denial of reinstatement to workman after acquittal in criminal case is illegal, question remains for consideration is whether workman is entitled for reinstatement with backwages. On above point, learned counsel for management Shri GulabSohane relies on ratio held in case between-

Divisional Controller, KSRTC versus A.T.Mane reported in AIR-2004-SC-4761. Their Lordship dealing with Section 45 of Road Transport Corporation Act 1950 considering that bus conductor found in possession of amount of Rs.93/- in excess of sale of tickets. Misconduct proved by evidence on record. Held that order of courts below interfering with order of dismissal on erroneous basis were liable to be set-aside.

Ratio held in case between Bharat Heavy Electricals Ltd. versus M.Chandrasekhar Reddy reported in AIR-2005-SC-2769. The careful reading of above cited judgment is clear that evidence proved that respondent employee tried to justify removal by producing fabricated documents, allegations of misconduct proved.

Ratio held in the case that merely because there was no earlier misconduct against the respondent, employees active participants in cultural activities not enough to interfere with punishment under Section 11-A and to modify dismissal to reinstatement. The facts of case in above cited judgment are entirely different. Any chargesheet was not issued to workman. Any kind of misconduct against workman is not proved. He is acquitted in criminal case by Special Railway Magistrate Bhopal Ratio held in the case cannot be applied to case at hand.

Learned counsel for management also relies on ratio held in case between Onkar Nath Mishra versus State of Haryana reported in AIR 2005-SC-2783. In above cited case, workman was charged for misconduct of gheraoing senior officers of company for long hours. During gherao one of the officers received injuries. Order of dismissal from service was not interfered.

Ratio held in the case also cannot be applied to present case at hand as any misconduct is not proved against workman. He was acquitted by Special Railway Magistrate. However workman was terminated from service on 15-8-86, he was acquitted by Special Railway Magistrate on 16-9-97 judgment Exhibit W-4 Ist party workman was silent till year 2006. After his acquittal in the year 1997, dispute is raised on 8-10-12. In his affidavit of evidence, age of workman is shown 54 years. Affidavit was filed on 16-4-15. Considering above aspects, the denial of reinstatement of workman is illegal. As any charge is not proved against workman and he is acquitted in criminal case, he deserves to be reinstated on the post he was holding with 50 % back wages from the order of reference i.e. 8-10-12. Accordingly I record my finding in Point No.2.

16. In the result, award is passed as under:-

- (1) The action of the management of Central Railway, Nagpur in not reinstating Shri Sheikh Mubeen Khan in service after his acquittal from the charges by the Special Railway Magistrate is illegal.
- (2) 2nd party management is directed to reinstate workman on the original post at time of his termination with continuity of service with 50 % backwages from date of order of reference i.e. 8-10-12.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जून, 2017

का.आ. 1529.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल मध्य प्रदेश ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 182/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/137/2003-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th June, 2017

S.O. 1529.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 182/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Madhya Pradesh Gramin Bank and their workmen, received by the Central Government on 19.06.2017.

[No. L-12012/137/2003-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/182/2003

Shri Yogendra Kumar Sain,
S/o Shri Tulsiram Sain,
Q.No.29/24, Type-2, Khamaria,
Jabalpur (MP)

...Workman

Versus

The Chairman,
Central Madhya Pradesh Gramin Bank,
Ranjhi, Jabalpur (MP)

...Management

AWARD

Passed on this 12th day of April, 2017

1. As per letter dated 21-11-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/137/2003-IR(B-I). The dispute under reference relates to:

“Whether the action of management of Mahakaushal Kshetriya Gramin Bank, Narsinghpur (amended as Central Madhya Pradesh Gramin Bank, Jabalpur) (MP) in not regularizing the services of Shri Yogendra Kumar Bain instead terminating his services w.e.f. 3-5-2000 even after taking work as temporary messenger for 3 years is legal and justified? If not to what relief the workman concerned is entitled to?”

2. Ist party workman in his statement of claim has submitted that he was appointed as temporary messenger in Ranjhi branch on 3-5-2000. He was paid Rs.30 wages per day. He continuously worked for 3 years. His service record was unblemished. 2nd party No.2 stopped payment of his wages. His services were orally terminated without notice, he asked for payment of wages. That he passed HSc in 1994. He belongs to backward caste. He has no source of earning. He passed NCC exam. He had also participated in medical camps for eye examination. That he is unemployed, his family is facing financial hardship. On such ground, Ist party prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 8/1 to 8/7 opposing claim of workman. 2nd party submits that services of Ist party were utilized intermittently subject to requirement in the branch. The details of his working days are shown in Para-1. That workman was engaged for 151 days during the period 1-5-00 to 6-11-02. Workman was engaged purely on daily wage basis depending as per exigency. Workman was paid daily wages, he was not in continuous employment. Non-engagement of workman after 6-11-02 is covered under Section 2(oo)(bb) of ID Act. The same doesnot amount to retrenchment. 2nd party has reiterated workman was engaged on temporary basis, he was not regular employee of the Bank. Settled wages were paid to him on daily wage basis. Workman was free to come for work on next day. The documents produced by workman are false and fabricated. Claim for workman is denied. 2nd party submits that workman had not worked for more than 240 days during any of the calendar year. He is not employee covered under Section 25 B of ID Act. Management prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of management of Mahakaushal Kshetriya Gramin Bank, Narsinghpur (amended as Central Madhya Pradesh Gramin Bank, Jabalpur) (MP) in not regularizing the services of Shri Yogendra Kumar Bain instead terminating his services w.e.f. 3-5-2000 even after taking work as temporary messenger for 3 years is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

5. Point No.1 The term of reference pertains to legality of denying regularization and termination of Ist party workman. Workman filed affidavit of his evidence. Workman in his affidavit stated that he was appointed as temporary daily wage messenger on 3-5-00. When messenger Nanhe Singh was in the branch, he was working from 10.30 AM to 5.30 PM, he was paid Rs.30 per day. His signatures were obtained on payment voucher. He rendered service for 3 years. Copy of appointment letter is referred in his evidence. From evidence of workman, documents Exhibit W-1 to W-7 are admitted in evidence. Workman in his cross says he had not seen advertisement for the post. His name was not called from Employment Exchange. He was not interviewed. He denies that he was paid wages for

his working days. He denies that he was not continuously working. He denies that he had left work on 7-11-02. Workman admits after Nanhe Singh returned to work, there was no requirement. He denies that he not worked for 240 days during any of the year. After his disengagement, he is doing private work in Insurance company since past 8 years. Documents produced by workman Exhibit W-1 is certificate issued by Branch Manager dated 3-5-00. That workman was engaged as temporary messenger on Rs.30 per day. Exhibit W-2 is copy of pass book. the entries of deposit in the pass book are Rs.125 on 15-5-00, Rs.75 on 3-6-00, Rs.50 on 3-1-01 & Rs.180 in March,. From above entries, the evidence of workman he was continuously working more than 240 days in the branch cannot be established. Document Exhibti W-3 pertains to the information related to stationary voucher since 29-5-00 till 21-12-01. Said document cannot be said a proof about working days of workman. Exhibit W-4 is copy of marksheets, W-5 is caste certificate, W-6 is certificate of NCC. W-7 is domicile certificate, W-8 is copy of Identity Card, W-9 is certificate w.r.t. eye camp, Documents Exhibit W-3 to 9 are absolutely not establish workman working more than 240 days during any of the year.

6. Management filed affidavit of evidence of witness Rajesh Kumar Srivastava supporting contentions in Written Statement that workman was casual employee engaged on temporary basis. He worked for 151 days. Workman has not completed 240 days continuous service during any of the year. Management's witness in his cross says workman was working as messenger from 3-5-00. He claims ignorance about educational qualification of workman. He claims ignorance about the copy of pass book shown to him. Management's witness denies that workman was continuously working from 3-5-00. That he worked for 2 years as Assistant in the branch. Workman did not work under him. Management's witness denied that workman continuously worked for 3 years, he has denied that workman worked more than 240 days every year. Evidence of workman in his cross examination that after Nanhe Singh returned to work, there was no requirement renders evidence of Ist party workman unreliable that he was continuously working in the Bank. Documents discussed above do not corroborate his evidence.

7. Learned counsel for Ist party Shri Anil Yadav relies on ratio held in case between-

Krishi Upaj Mandi Committee, Mahidpur versus State of MP and others reported in ILR(2012)MP-1613. Their Lordship held petitioner did not file any record about payment of salary, attendance register despite specific order by Labour Court. Adverse inference has to be drawn that employee had worked for more than 240 days.

Ratio cannot be applied to present case at hand when workman himself says that after Nanhe Singh returned to work, there was no need of his working.

Reliance is also placed on case between Director, Fisheries Terminal Department versus Bhikubhai Meghajibhai Chavda reported in 2010(2)MPLJ-30. Their Lordship considering workman hired on a daily wage basis deposed that he had worked for 240 days during the period between 85 to 91. Burden of proof shifts to the employer to prove that he did not complete 240 days service in the requisite period to constitute continuous service.

In present case, evidence in cross of workman shows after Nanhe Singh reported to work, there was no need of his working. Ratio held in the case cannot be applied to case at hand. For above reasons, I record my finding in Point No.1 in Affirmative.

8. Point No.2- In view of my finding in Point No.1, workman has failed to establish that he was continuously working for more than 240 days and his services are terminated in violation of provisions of ID Act. Ratio held in the case between Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others & State of Punjab and others versus Jagjit Singh and others relied by Shri Anil Yadav, counsel for workman cannot be applied to case at hand as workman has failed to establish termination of his service is illegal. Workman is not entitled to any relief. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of management of Mahakaushal Kshetriya Gramin Bank, Narsinghpur (amended as Central Madhya Pradesh Gramin Bank, Jabalpur) (MP) in not regularizing the services of Shri Yogendra Kumar Bain instead terminating his services w.e.f. 3-5-2000 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जून, 2017

का.आ. 1530.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आईआरसीटीसी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण एवं श्रम न्यायालय नं. I, दिल्ली के पंचाट (संदर्भ संख्या 175/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.06.2017 को प्राप्त हुआ था।

[सं. एल-41011/27/2016-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th June, 2017

S.O. 1530.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 175/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. IRCTC and their workmen, received by the Central Government on 19.06.2017.

[No. L-41011/27/2016-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 175/2016

Shri Rudip Kumar Gupta S/o Shri Kshatrapal Gupta & 5 others
C/o Delhi Offices & Establishment Employees Union,
BTR Bhawan, 13-A, Rouse Avenue, ITO
New Delhi

...Workman

Versus

1. Shri Sunil Kumar,
Group General Manager : IT,
Corporate Office, B-148, 11th Floor,
Statesman House,
New Delhi - 110 001
 2. Shri S. Ranganathan,
Senior Supervisor :HRD,
Corporate Office, B-148, 11th Floor,
Statesman House
New Delhi - 110 001
 3. Shri R. Kathiresan,
Deputy General Manager/IT OPS
Corporate Office, B-148, 11th Floor,
Statesman House,
New Delhi - 110 001
 4. M/s JMD Consultants,
31 GA, R-21, 22 and 23,
Khanoja Complex, Shakarpur,
New Delhi - 110 092
- ...Managements

AWARD

Central Government, vide letter No.L-41011/27/2016-IR(B-I) dated 07.12.2016, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of contractor M/s JMD working for M/s IRCTC, Barakhamba Road, New Delhi is justified, fair and legal in terminating the following workmen during the pendency of the conciliation? If not, what relief the workmen are entitled to and from which date? 1. Shri Rudip Kumar Gupta S/o Shri Kshatrapal Gupta, (2) Ms.Sonika Singh, D/o Shri Bhola Singh, (3) Shri Harish Joshi S/o Shri Madwanand Joshi, (4) Shri Rakesh Sharma S/o Shri Ram Avtar Sharma, (5) Shri Yudhvir Singh S/o Shri Harbeer Singh and (6) Ms. Anamika Ranjan, D/o Shri Anil Prasad ?

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, claimants Gupta opted not to file their claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workmen at their union address as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant/their union. Despite service of the notice, claimants opted to abstain away from the proceedings. No claim statement was filed on their behalf. Thus, it is clear that the workmen are not interested in adjudication of the reference on merits.

4. Since the workmen have neither put in their appearance nor have they led any evidence so as to prove their cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : May 12, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 19 जून, 2017

का.आ. 1531.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोटा के पंचाट (संदर्भ संख्या 28/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.06.2017 को प्राप्त हुआ था।

[स. एल-41012/26/94-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 19th June, 2017

S.O. 1531.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/1995) of the Central Government Industrial Tribunal-cum-Labour Court, Kota as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 19.06.2017.

[No. L-41012/26/94-IR (B-I)]

B. S. BISHT, Section Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण (केन्द्रीय) कोटा, (राज.)

पीठासीन अधिकारी – श्री जगमोहन शर्मा, आर.एच.जे.एस.

निर्देश प्रकरण क्रमांक : औ.न्या.(केन्द्रीय)-28 / 1995

दिनांक स्थापित : 6 / 9 / 95

प्रसंग: भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश

क्र. एल-41012 / 26 / 94-आईआर(बी-1) दि. 28 / 8 / 1995

निर्देश / विवाद अन्तर्गत धारा 10(1)(घ) एवं उपधारा 2(क) औद्योगिक विवाद अधिनियम, 1947

मध्य

धन्नालाल वगैरह कुल 14 प्रार्थीगण श्रमिक द्वारा डिविजनल सेक्रेट्री,
पश्चिम रेलवे कर्मचारी परिषद, कोटा।

—प्रार्थीगण श्रमिक

एवं

1. डिएटी चीफ प्रोजेक्ट मैनेजर(आरई), प्रतापनगर, बड़ौदा।
2. जनरल मैनेजर(ई) सेन्ट्रल ओर्गनाइजेशन आफ रेलवे इलेक्ट्रिफिकेशन, इलाहबाद।
3. डिविजनल रेलवे मैनेजर, पश्चिम रेलवे, कोटा।

—अप्रार्थीगण नियोजक

उपस्थित

- | | | |
|---------------------------------------|---|----------------------------|
| प्रार्थीगण श्रमिक की ओर से प्रतिनिधि | : | कोई उपस्थित नहीं। |
| अप्रार्थीगण नियोजक की ओर से प्रतिनिधि | : | श्री नरेश शर्मा |
| | | अधिनिर्णय दिनांक: 1/2/2017 |

अधिनिर्णय:

भारत सरकार, श्रम मंत्रालय, नई दिल्ली के प्रासांगिक आदेश दिनांक 28/8/1995 के जरिये निम्न निर्देश विवाद, औद्योगिक विवाद अधिनियम, 1947 (जिसे तदुपरात्त "अधिनियम" से सम्बोधित किया जावेगा) की धारा 10(1)घ) एवं उपधारा 2(क) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है:-

"Whether the action of the Rly. Admn. through the Dy. Chief Project Manager (RE), R.E. Baroda, General Manager(E), Central Organisation of Railway Electrification, Allahabad and the D.R.M. W.Rly. Kota in not absorbing the workman annexed below against the permananet vacancies on open line and diverting them from Kota Division to other places during the pendency of conciliation proceedings is legal and justified? If not what relief the concerned workmen are entitled to and from what date?

- | | |
|-----------------------------------|-------------------------------|
| 1. Sh. Dhannalal Mandholal | 2. Sh. Brijmohan Ratan Lal |
| 3. Sh. Ram Bharose Ram Kumar | 4. Sh. Chandramohan KhyaliRam |
| 5. Sh. Brahma Narain Sonpal | 6. Sh. Ram Ratan Mohan |
| 7. Sh. Ramesh Chandra Jaganand | 8. Sh. Premchand BishanLal |
| 9. Sh. Ajimuddin Firjdin | 10. Sh. A. Susaraj Anthoni |
| 11. Sh. Ravindra Pal Charan Singh | 12. Sh. Sukhmohan Kedar Singh |
| 13. Sh. Feteh Mohd. Dost Mohd. | 14. Sh. Prabhulal Bhuria" |

2. निर्देश/विवाद, न्यायाधिकरण में प्राप्त होने पर पंजीबद्व उपरात्त पक्षकारों को सूचना/नोटिस जारी कर विधिवत अवगत करवाया गया।

3. प्रार्थीगण श्रमिक की ओर से प्रार्थी यूनियन के संभागीय सचिव द्वारा क्लेम स्टेटमेन्ट न्यायाधिकरण के समक्ष प्रस्तुत कर व्यक्त किया गया है कि रेफेन्स अनुसूची में वर्णितानुसार क्लेम में दर्शाये गये धन्नालाल व अन्य कुल 14 प्रार्थीगण श्रमिक/कर्मकारों को पवकी नौकरी देने के लिए स्कीनिंग में पास होने उपरात्त ओपन लाइन में कोटा मण्डल में कार्य करने के लिए नहीं भेजा गया, अर्थात उन्हें आमेलित नहीं किया गया जिससे कर्मकार अभी तक स्थाई नहीं हो पाये हैं। यह भी कथन किया गया है कि उक्त श्रमिकगण में से कुछ श्रमिकों को उच्चाधिकारी के आदेशों का उल्लंघन करते हुए दानापुर स्थानान्तरित किया गया जो उचित नहीं है। अन्त में प्रार्थीगण श्रमिक को लाभ प्रदान किये जाने की प्रार्थना इस क्लेम स्टेटमेन्ट के माध्यम से की गयी है।

4. उपरोक्त क्लेम स्टेटमेन्ट का जवाब प्रस्तुत कर अप्रार्थीगण की ओर से व्यक्त किया गया है कि उक्त कर्मचारीगण जोकि एक परियोजना में कार्यरत थे, का ओपन लाइन में नियमितिकरण स्थान की उपलब्धता के आधार पर कर दिया गया है। उक्त प्रोजेक्ट के कार्य समाप्ति पर अन्य स्थान व परियोजना पर कार्य की आवश्यकतानुसार स्थानान्तरण किया गया था जो उचित है। अतः प्रार्थीगण का क्लेम निराधार होने से सव्यय निरस्त किये जाने की प्रार्थना की गयी है।

5. साक्ष्य प्रार्थी में प्रार्थीगण धन्नालाल मीणा व रमेशचन्द मीणा के शपथ-पत्र प्रस्तुत हुए व प्रलेखीय साक्ष्य भी प्रस्तुत की गयी।

6. इस प्रकरण में गत आदेशिका दि.19/1/17 के अनुसार प्रार्थीगण श्रमिक अथवा उनके अधिकृत प्रतिनिधि के पिछली कई पेशियों से न्यायाधिकरण में उपस्थित नहीं होने व उक्त तिथि को भी किसी के उपस्थित नहीं होने से प्रस्तुत शपथ—पत्र विधिनुसार साक्ष्य में ग्राह्य नहीं माने जाकर उनकी साक्ष्य बन्द किया जाना आदेशित किया गया। अप्रार्थी पक्ष की ओर से भी उक्त रिथ्टि में अपनी साक्ष्य पेश नहीं करना प्रकट किया गया व बहस अन्तिम हेतु आगामी पेशी 1/2/2017 नियत की गयी।

7. आज दि.1/2/2017 को भी प्रार्थीगण श्रमिक की ओर से कोई उपस्थित नहीं हुआ एवं ना ही उनके अधिकृत प्रतिनिधि उपस्थित हुए, ऐसी स्थिति में प्रकरण में अप्रार्थी पक्ष की बहस सुनी गयी। बहस अन्तिम के दौरान न्यायाधिकरण के समक्ष यह तथ्य सामने आया है कि सम्प्रेषित निर्देश/रेफेन्स में अप्रार्थीगण नियोजक द्वारा प्रार्थीगण श्रमिक को पक्की नौकरी देने के लिए स्कीनिंग में पास होने के उपरान्त ओपन लाइन में कार्य करने हेतु आमेलित नहीं करने के किसी आदेश तिथि का कोई उल्लेख नहीं है। अतः यह स्थिति स्पष्ट नहीं है कि यह न्यायाधिकरण अप्रार्थीगण द्वारा प्रार्थीगण श्रमिक को पक्की नौकरी देने के लिए स्कीनिंग में पास होने के उपरान्त ओपन लाइन में कार्य करने हेतु आमेलित नहीं किये जाने की कौनसी तिथि मानकर अप्रार्थीगण के कृत्य की उचितता एवं वैधता का विनिश्चय करेगा? इस सम्बन्ध में माननीय राज. उच्च न्यायालय द्वारा पारित न्यायदृष्टांत “2003 डबल्यू.एल.सी.(राज.) यू.सी. पृष्ठ 424—महावीर कण्डक्टर बनाम नन्दकिशोर” में यह प्रतिपादित किया गया है कि सेवाओं के पर्यवसान की तिथि का रेफेन्स में उल्लेख नहीं होने से श्रम न्यायालय किसी कर्मकार के कथनानुसार पर्यवसान की तिथि को स्वीकार कर निर्देश/रेफेन्स की शर्तों में सुधार, संशोधन या उपान्तरण करने में सक्षम नहीं है एवं ना ही न्यायालय को पक्षकारों की सहमति से ऐसी अधिकारिता प्राप्त होती है। अतः माननीय उच्च न्यायालय द्वारा निर्देश/रेफेन्स में कर्मकार की सेवा पर्यवसान की तिथि वर्णित नहीं होने से अधिनिर्णय को अपास्त कर दिया गया। इस उक्त न्यायनिर्णय में प्रतिपादित सिद्धांत के अनुसार जहाँ निर्देश/रेफेन्स में सेवा से हटाने, मुक्त करने या पृथक करने की तिथि का अंकन नहीं है तो श्रम न्यायालय को उस तिथि को सही करने या संशोधन करने की अधिकारिता पक्षकारों द्वारा ऐसी तिथि सुझावित किये जाने पर भी प्राप्त नहीं हो जाती है। अर्थात् यदि निर्देश में सेवा से मुक्ति, पृथक या हटाने की तिथि का कोई अंकन नहीं है व दोनों ही पक्षकार ऐसी तिथि यदि बता भी देते हों तो भी श्रम न्यायालय को उस बतायी गयी तिथि को मानकर उसके आधार पर निर्देश/रेफेन्स उत्तरित करने का अधिकार प्राप्त नहीं हो जाता है। इस न्यायनिर्णय के पेरा सं.11 में माननीय उच्चतम न्यायालय द्वारा “मदनपालसिंह बनाम उत्तरप्रदेश राज्य व अन्य—एआईआर 2000 एस.सी. 537” के निर्णय को विवेचित किया गया है तथा अन्त में यह निष्कर्ष निकाला गया कि श्रम न्यायालय निर्देश में वर्णित बिन्दुओं तक ही सीमित क्षेत्राधिकार रखता है एवं उसको पक्षकारों के नामों में निर्देश से परे जाकर संशोधन आदि का अधिकार प्राप्त नहीं होता। यदि नामों या तिथि आदि में कोई परिवर्तन या अंकन कराना है तो पक्षकारों को समुचित सरकार के समक्ष इस बाबत पक्ष रखकर उसमें संशोधन कराना होगा, परन्तु श्रम न्यायालय को ऐसा संशोधन करने की अधिकारिता नहीं है। अतः इसी निर्णय को आधार मानते हुए माननीय उच्च न्यायालय द्वारा उक्त मामले में श्रम न्यायालय द्वारा पारित अधिनिर्णय को क्षेत्राधिकार के अभाव का मानते हुए अपास्त कर दिया गया।

7. अब यह न्यायाधिकरण हस्तगत निर्देश/रेफेन्स में अप्रार्थीगण नियोजक द्वारा प्रार्थीगण श्रमिक को पक्की नौकरी देने के लिए स्कीनिंग में पास होने के उपरान्त ओपन लाइन में कार्य करने हेतु आमेलित नहीं किये जाने की कौनसी आदेश तिथि मानकर अप्रार्थीगण के कृत्य की उचितता एवं वैधता का विनिश्चय करेगा तथा क्या यह न्यायाधिकरण पक्षकारों द्वारा सुझायी गयी तिथि मानकर प्रकरण का गुणावगुण पर विनिश्चय कर सकता है अथवा निर्देश/रेफेन्स में संशोधन करने की अधिकारिता रखता है? इस सम्बन्ध में माननीय राजस्थान उच्च न्यायालय द्वारा पारित उक्त न्यायदृष्टांत “2003 डबल्यू.एल.सी.(राज.) यू.सी. पृष्ठ 424—महावीर कण्डक्टर बनाम नन्दकिशोर” के पेरा संख्या 12 का उल्लेख किया जाना न्यायसंगत है जिसमें माननीय उच्च न्यायालय द्वारा रेफेन्स के निबन्धन या सेवा समाप्ति तिथि में संशोधन आदि बाबत निम्न स्थिति प्रकट की गयी है:-

“Thus, in view of the above, I reach the inescapable conclusion that the Labour Court has no competence to correct/modify/amend/alter the terms of the reference or mention the date of termination etc., or proceed with the reference and accepting the date of termination as suggested by the workman and in case it does so, the award becomes nullity, being without jurisdiction, based on the bad reference.”

8. अतः माननीय राज. उच्च न्यायालय द्वारा पारित उपरोक्त न्यायदृष्टांत के प्रकाश में हस्तगत मामले में यह न्यायाधिकरण पक्षकारों द्वारा सुझायी गयी तिथि/नाम आदि को संशोधित नाम मानकर प्रकरण को गुणावगुण पर निस्तारित किये जाने की अधिकारिता नहीं रखता है। इस प्रकार माननीय उच्चतम एवं माननीय उच्च न्यायालय द्वारा ऊपर विवेचित किये गये न्यायनिर्णयों में प्रतिपादित सिद्धांतों के अनुसार हस्तगत प्रकरण में इस न्यायाधिकरण को ऐसे पक्षकारों का संशोधन प्रस्ताव स्वीकार किये जाने की अधिकारिता नहीं होने से इस न्यायाधिकरण की राय में यह न्यायाधिकरण यदि कोई अधिनिर्णय पारित भी करता है तो वह क्षेत्राधिकार के अभाव का होकर शून्य होगा। इन न्यायनिर्णयों के खण्डन में या अन्य कोई न्यायनिर्णय ऐसा पेश भी नहीं किया गया जिसमें कि ऊपर वर्णित स्थिति होने के बावजूद भी न्यायाधिकरण को निर्देश अधिनिर्णित करने का अधिकार प्राप्त हो। अतः कुल मिलाकर स्थिति उक्त न्यायनिर्णयों में प्रतिपादित सिद्धांतों से यह न्यायाधिकरण आबद्ध है। अतः ऐसी परिस्थिति में सम्पूर्ण विवेचन के उपरान्त इस न्यायाधिकरण की राय में इतना ही कहना पर्याप्त है कि हस्तगत निर्देश/रेफेन्स में अप्रार्थीगण नियोजक द्वारा प्रार्थीगण श्रमिक को पक्की नौकरी देने के लिए स्कीनिंग में पास होने के उपरान्त ओपन लाइन में कार्य करने हेतु आमेलित नहीं करने के किसी आदेश तिथि का कोई अंकन नहीं होने से यह न्यायाधिकरण ऐसे निर्देश में कोई संशोधन कर अधिनिर्णय पारित करने की अधिकारिता नहीं रखता है एवं यदि पक्षकार सक्षम सरकार से इस बाबत निर्देश/रेफेन्स में संशोधन कराकर न्यायाधिकरण में पेश करते हैं तो न्यायाधिकरण ऐसा संशोधन प्राप्त होने पर प्रकरण में विधि अनुसार कार्यवाही कर सकेगा, परन्तु इस प्रक्रम पर फिलहाल यह मामला इस न्यायाधिकरण के क्षेत्राधिकार के अभाव का पाया जाता है।

परिणामस्वरूप भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा प्रासादिक आदेश दिनांक 28/8/1995 के जरिये सम्प्रेषित निर्देश/रेफ्रेन्स विवाद को इसी अनुरूप उत्तरित किया जाता है कि माननीय राजस्थान उच्च न्यायालय द्वारा पारित उक्त न्यायदृष्टांत "2003 डब्ल्यू.एल.सी.(राज.) यू.सी. पृष्ठ 424—महावीर कण्डकटर बनाम नन्दकिशोर" में प्रतिपादित सिद्धांत के अनुसरण में हस्तगत निर्देश/रेफ्रेन्स में वर्णित अप्रार्थीगण नियोजक द्वारा धन्नालाल वगैरह कुल 14 प्रार्थीगण श्रमिक को पवकी नौकरी देने के लिए स्कीनिंग में पास होने के उपरान्त ओपन लाइन में कार्य करने हेतु आमेलित नहीं करने के किसी आदेश तिथि का कोई अंकन नहीं होने से व इस न्यायाधिकरण को पक्षकारों द्वारा सुझायी गयी तिथि को स्वीकार किये जाने की अधिकारिता नहीं होने से हस्तगत निर्देश/रेफ्रेन्स में अधिनिर्णय पारित किया जाना शून्य एवं क्षेत्राधिकार के अभाव का होगा। पक्षकार यदि सक्षम सरकार से उक्त तिथि बाबत निर्देश/रेफ्रेन्स में संशोधन/अंकन कराकर न्यायाधिकरण के समक्ष पेश करेंगे तो न्यायाधिकरण गुणावगुण के आधार पर विधि अनुसार आगे प्रकरण के निस्तारण की कार्यवाही कर सकेगा।

जगमोहन शर्मा, न्यायाधीश

नई दिल्ली, 20 जून, 2017

का.आ. 1532.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 133/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/94/2001-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1532.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 133 of 2001) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 15.06.2017.

[No. L-20012/94/2001-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 133/2001

Employer in relation to the management of Sijua Area of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri D. K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 22/05/2017

AWARD

By order No. L-20012/94/2001-IR(C-1) dated 22/05/2001, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDELE

"Whether the action of the Management of M/s BCCL to stop Shri Muni Lal and 50 (as per list) from work is justified ? If Not, what relief the workman concerned entitled?"

Annexure

List of workmen

SL No	Name	SL No	Name	SL No	Name
1	Sri Muni Lal	2	Shri Ram Pyare	3	Sri Jageshwari
4	Sri Shar Shripat	5	Sri Moti	6	Shri Nanda
7	Shri Guhi	8	Shri Chhotan	9	Shri Jageshwar
10	Shri Lakhan	11	Shri Jagdish	12	Shri Rajeshwar
13	Shri Moti No. 2	14	Shri S. Prasad	15	Shri Ram Prasad
16	Shri Kali	17	Shri S. Kumar	18	Shri Baleshwar
19	Shri R. Prasad	20	Shri Sheo	21	Shri Prasad
22	Shri Parmeshwar	23	Shri N. Kumar	24	Shri B. Prasad
25	Shri Mohan	26	Shri Prem	27	Shri Nira
28	Shri Kanti	29	Shri Mathuri	30	Shri Tulwa
31	Shri Sulochan	32	Shri N. Prasad	33	Shri P. Kumar
34	Shri R. Prasad	35	Smt Malti	36	Smt. Gita
37	Smt. Sabia	38	Smt. Tetri	39	Smt Kamla
40	Smt. Mangri	41	Smt. Pautri	42	Smt Kabutri
43	Sri Rashim	44	Smt. Chamani	45	Smt. Labia
46	Shri Tileshwari	47	Shri Chita	48	Smt . Sakuntala
49	Smt. Shanti	50	Smt. Gyatri	51	Smt. Bandhia

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 जून, 2017

का.आ. 1533.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 60/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/88/2008-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1533.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 60 of 2008) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 15.06.2017.

[No. L-20012/88/2008-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 60 of 2008

Employer in relation to the management of Block II Area of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri D. K. Verma, Advocate

For the workman : Shri R.S. Dubey, Rep.

State : Jharkhand

Industry : Coal

Dated- 22/05/2017

AWARD

By order No. L-20012/88/2008 IR-(C-I), dated.25/11/2008 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act.1947, referred the following disputes for adjudication to this Tribunal:

SCHEDELE

"Whether the action of the management of Block II Area of M/s BCCL in not removing the anomaly in fixation of wages in respect of S/Shri A.N. Sinha and Shri K.J Dutta, Clerk is justified and legal? (ii) To what relief are the concerned workman entitled and from what date?"

2. The case is received from the Ministry of Labour on 18.12.2008 After receipt of reference , both parties are noticed. The Sponsoring Union files their written statement on 02.04.2009. And the management files their written statement -cum-rejoinder on 22.05.2009. Thereafter rejoinder and documents filed by the parties. One witness adduced by the management but no evidence adduced by the sponsoring Union. And also no document marked by either side.

3. The case of the Sponsoring Union is that the Sri A.N.Sinha and Sri K.J. Dutta were spl. Grade clerk and were given S.L.U on 01.01.2001 and 01.01.1998 respectively and therir basic as on 01.07.2001 as per NCWA VII was fixed at Rs. 11,114 each and on 01.01.2002 at Rs. 11,349 on 01.08.2005 respectively fixed at Rs. 12.054/- of both workmen. But Sri G.C.Sarkar was granted SLU on 01.01.2002 and he was placed in Grade-A from Spl.Grade Clerical on 30.05.2001 his basic was fixed at Rs. 10,966 in the same scale of pay in Grade -A.

4. As per NCWA VI the basic pay of G.C.Sarkar was fixed as Rs.7257.00 per month as on 01.06.2001. Sri Sinha and Sri Dutta were senior to G.C.Sarkar but as on 01.08.2005, the basic pay of sri G.C.Sarkar was more than the concerned workman, hence the concerned workmen are entitled to get relief.

5. The case of the management is that the union raised the present reference stating that there was anomaly in pay fixation in respect of Sri A.N.Sinha and Shri K.J.Dutta in comparision to Sri G.C.Sarkar as their basic pay was fixed less than Sri G.C.Sarkar though he was junior to them. The allegation of the union is neither legal nor justified . It is submitted that there is no anomaly in pay fixation of above workman . As none of them belong to same cadre.

6. Sri A.N.Sinha is employee of Block II Area of M/S BCCL is designated as senior cashier and belongs to finance (Cash) personnel Cadre.

7. Shri K.J.Dutta is employee of Block II Area of M/S BCCL is designated as Statistical Assstt. and belongs to Statistical Cadre.

8. Whereas Shri G.C.Sarkar is employee of Block II Area of M/s BCCL is designated as Clerk and belongs to General Clerical Cadre. But after implementation of NCWA –VII . JBCCI issued implementation instruction for removal of anomaly arising out of implementation of wages as per NCWA –VII vide implementation instruction No.18

of JBCCI of NCWA-VII. As per guideline mentioned in the above implementation instruction the case of Shri A.N.Sinha and Shri K.J.Dutta has been examined and found that there is no merit in their claim.

9. It is further submitted by the management that as per the implementation instruction No.18 it is necessary that both junior and senior employee should belong to same cadre, same designation and post and they should also be covered by the same seniority list.

10. The short point to be decided in this reference is to remove anomalies in scale of both the workman. Written statement and rejoinder alongwith document from both sides have been filed. One witness on behalf of the management examined and says in different area, promotion is according to vacancy occurs there. The workman neither examined himself nor properly explained his case. The document filed in the case does not reflect the true picture of the case as well as document of parties are also not marked as exhibit. Both the workman and Sri G.C. Sarkar were in different cadre and are in difference post as well as the seniority list is also different. Accordingly the anomaly is not proved by any evidence of workman. Workman has to prove his own case, which has not been done here by the workman. Hence this Tribunal unable to give any relief to the workman.

11. Considering the facts and circumstances of this case, I hold that the action of the management of Block II Area of M/s BCCL in not considering the case of S/Shri A.N. Sinha and Shri K.J. Dutta, Clerk is justified and legal, Hence they are not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 जून, 2017

का.आ. 1534.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टिस्को के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 93/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/09/2003-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1534.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 93 of 2003) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. TISCO and their workmen, which was received by the Central Government on 15.06.2017.

[No. L-20012/09/2003-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 93/2003

Employer in relation to the management of 6 & 7 Pits, Jamadoba

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri D. K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 19/05/2017

AWARD

By order No. L-20012/09/2003-IR(C-1) dated 22/08/03, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether TISCO management’s denial of benefit under PME such as employment of dependent to Shri Ratu Mahato is justified? If not, to what relief is the workman entitled ?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 जून, 2017

का.आ. 1535.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 82/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/300/1995-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1535.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 82 of 1996) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. ECL and their workmen, which was received by the Central Government on 15.06.2017.

[No. L-20012/300/1995-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 82/1996

Employer in relation to the management of Gopinathpur Colliery of M/s. ECL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 18/05/2017

AWARD

By order No. L-20012 /300/1995-IR(C-I) dt. 14/10/1996 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand for age review of S/Sh Sudarshan Roy and Darogi Bharti by the Apex Medical Board raised by the Union is legal and justified? If so, to what relief are the said workmen entitled?”

2. After receipt of the reference , both parties are noticed. But appearing for certain dates none appears subsequently . Case remain pending. It is felt that disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 जून, 2017

का.आ. 1536.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 09/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/70/2009-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1536.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 09 of 2010) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 15.06.2017.

[No. L-20012/70/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/s 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 09/2010

Employer in relation to the management of Block II Area of M/s. BCCL

AND

Their workmen

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri D. K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 17/05/2017

AWARD

By order No. L-20012/70/2009-IR(CM-1) dated 14/01/2010, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand of the Rastriya Colliery Mazdoor Congress from the Management of Block-II Area of M/s. BCCL to give promotion/up gradation to Shri Durga Rawani as Technical & Supervisory Grade A- 1 w.e.f. 01/01/2001 is justified and legal? ii) To what relief is the workman concerned entitled?”

2. After receipt of the reference, both parties are noticed. But the workman appear for one date and then remain absent. Case remains pending. Management is appearing. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 जून, 2017

का.आ. 1537.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 01/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/129/2014-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1537.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 01 of 2015) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 15.06.2017.

[No. L-20012/129/2014-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/s 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 01 of 2015

Employer in relation to the management of E.J. Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri N. M. Kumar, Advocate

For the workman : Shri S. C. Gour, Advocate

State : Jharkhand

Industry : Coal

Dated- 22/05/2017

AWARD

By order No.-L-20012/129/2014 IR (C-I), dated. 23/12/2014 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act.1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Sudamdhil incline Mine of M/s. BCCL in dismissing Sri Kalipado Modi, Ex- PR M/Loader from the service of the company vide office order dated 26.07.1995 is fair and justified? To what relief the concerned workman is entitled to?”

2. The case is received from the Ministry of Labour on 05.01.2015 After receipt of reference , both parties are noticed. The workman files their written statement on 04.09.2015. After long delay, the management files their written statement-cum-rejoinder on 20.07.16. Thereafter rejoinder & documents filed by both side.

3. The point involved in the reference is that the workman has been dismissed from his services on the ground of long absence.

4. During preliminary hearing it is revealed that the case is dismissal of workmen for long absence. But he has already out of service for 22 years. It is felt to give another chance to the workman to serve .

5. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee as General mazdoor Cat-1. But the workman be kept under probation for a period of two years. Therefore the question of giving back wages does not arise at all.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 जून, 2017

का.आ. 1538.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 65/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/78/2009-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1538.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 65 of 2009) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 15.06.2017.

[No. L-20012/78/2009-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/s 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 65/2009

Employer in relation to the management of Sijua Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 19/05/2017

AWARD

By order No. L-20012 /78/2009-IR(C-I) dt. 30/11/2009 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the Management of Sendra Bansjora Colliery of M/s. BCCL in not providing dependant employment to Shri Chhotelal Bhuria, brother of Late Gangwa Bhuria, M/Loader, under the provision of NCWA is justified and legal (ii) To what relief is the brother of the Late Gangwa Bhuria entitled?”

2. After receipt of the reference, both parties are noticed. But none appears on behalf of the workman. Case remain pending. It is felt that disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 जून, 2017

का.आ. 1539.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 37/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/43/2009-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1539.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 37 of 2009) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 15.06.2017.

[No. L-20012/43/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/s 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 37 of 2009

Employer in relation to the management of C.V. Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri S.N. Ghosh, Advocate

For the workman : Shri Bal Mukund Sharma, in person

State : Jharkhand

Industry : Coal

Dated- 19/05/2017

AWARD

By order No. L-20012 /43 /2009/IR (CM-I) dt. 23.06.2009 the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section(1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Dahibari Colliery under C.V Area of M/s. BCCL in dismissing Shri B.M.Sharma, fitter Apprentice Cat-1 from the service of the company w.ef. 16.01.2004 is justified and legal (ii) To what relief is the workman concerned entitled?"

2. After receipt of the reference, both parties are noticed. During the pendency of the case ,workman concerned appears and submits that he does not want to contest the reference and want to withdraw the same. he is permitted to withdraw the same. Therefore it is felt that the dispute between parties is resolved in the meantime. Hence pass an award of No.Dispute accordingly.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 जून, 2017

का.आ. 1540.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 26/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/26/2009-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1540.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 26 of 2009) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 15.06.2017.

[No. L-20012/26/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/s 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 26/2009

Employer in relation to the management of Kustore Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer**Appearances :**

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 19/05/2017

AWARD

By order No. L-20012 /26/2009-IR(C-1) /IR (C-1)) dt. 28/04/2009 the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the Management of East Bhagatdih Colliery under Kustore Area of M/S BCCL in dismissing Sri Subhash Prasad, M/Loader from the services of the company w.e.f. 29.04.2004 is justified and legal? (ii) To what relief is the workman concerned entitled?”

2. After receipt of the reference, both parties are noticed. But none appears from either side. Case remain pending. It is felt that disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 जून, 2017

का.आ. 1541.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 71/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.06.2017 को प्राप्त हुआ था।

[सं. एल-20012/69/2014-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1541.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 71 of 2014) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 15.06.2017.

[No. L-20012/69/2014-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 71 of 2014

Employer in relation to the management of Katras Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri D. K. Verma, Advocate

For the workman : Shri S.K. Roy, Rep.

State : Jharkhand

Industry : Coal

Dated- 18/05/2017

AWARD

By order No.-L-20012/69/2014 IR (C-I), dated. 02/07/2014 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub –Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act.1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Katras Chaitudih Colliery of M/S BCCL in allowing sri Tribhuwan Bhua, M/Loader to join his duty is fair and justified? ? To what relief the concerned workman is entitled ?”

2. The case is received from the Ministry of Labour on 11.07.2014 After receipt of reference , both parties are noticed. The Sponsoring Union files their written statement on 12.08.2014. The management files their written statement -cum-rejoinder on 12.02.2015. Thereafter rejoinder & documents filed by both side. No evidence adduced from either side. And no document marked by either side.

3. The point involved in the reference is that the workman was not allowed to join his services on the ground of long absentism.

4. The workman joined his service in place of his mother under femal VRS scheme vide order dated 27.11.1999 and posted at vocational training centre but he remained absent from his duty w.e.f. 24.01.2000.

5. During hearing of this case the sponsoring Union as well as workman concerned files a petition and undertake that the workman abide all the norms of the management and performs his duty regularly.

6. During preliminary hearing of this case, domestic enquiry held by the management is accept by the workman as Fair & Proper. But the workman has already been out of service for 17 years. It is felt to give another chance to the workman to serve .

7 Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee as General mazdoor Cat-1. But the workman be kept under probation for a period of two years. Therefore the question of giving back wages does not arise at all.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 जून, 2017

का.आ. 1542.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एअर इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 97 एवं 98 ऑफ 2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-11012/16/2015-आईआर (सी-I),

सं. एल-11012/17/2015-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 20th June, 2017

S.O. 1542.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Chennai (Ref. No. 97 & 98 of 2015) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Air India Ltd. and their workmen, which was received by the Central Government on 08.06.2017.

[No. L-11012/16/2015-IR (C-I),

No. L-11012/17/2015-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**Thursday, 15th May, 2017**Present : K.P. PRASANNA KUMARI, Presiding Officer****Industrial Dispute No. 97 & 98/2015**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Air India Ltd. and their workman)

ID 97/2015**BETWEEN**

The Regional Secretary : 1st Party/Petitioner Union
 Air Corporation Employees Union (Southern Region)
 Air India, Airlines House, Meenambakkam
 Chennai-600027

AND

The General Manager (P) : 2nd Party/Respondent
 Air India Ltd., Airlines House
 Meenambakkam
 Chennai-600027

ID 98/2015**BETWEEN**

The Regional Secretary : 1st Party/Petitioner Union
 Air Corporation Employees Union (Southern Region)
 Air India, Airlines House, Meenambakkam
 Chennai-600027

AND

The Executive Director (South) : 2nd Party/Respondent
 Air India Ltd., Airlines House
 Meenambakkam
 Chennai-600027

S. No.	I.D. No.	Reference No. & Date	Name of the I Party S/Sri	Name of the II Party	Appearance for Workman	Appearance for Respondent
1.	97/2015	L-11012/16/2015-IR (CM-I)	Regional Secy. ACEU, Chennai	Air India Ltd.	M/s T. Saminathan, Advocates	M/s N.G.R. Prasad, Advocates
2,	98/2015	L-11012/17/2015-IR (CM-I)	Regional Secy. ACEU, Chennai	Air India Ltd.	M/s T. Saminathan, Advocates	M/s N.G.R. Prasad, Advocates

COMMON AWARD

The Central Government, Ministry of Labour & Employment referred the IDs mentioned above to the Industrial Tribunal, Chennai for adjudication. The IDs were numbered as ID 97/2015 and 98/2015 respectively. In both the IDs the parties have entered appearance through the counsel and filed claim and counter statement respectively.

2. The schedule mentioned in the orders of reference in the above IDs are as under:

ID 97/2015

“Whether the action of the management of Air India in respect of not allowing Sri C. Udayashankar to function as Regional Secretary for Southern Region of ACEU is fair and justified? To what relief the workman is entitled to?”

ID 98/2015

“Whether the action of the management of Air India, Chennai regarding not entertaining Sri Udayashankar to represent as Regional Secretary for the Petitioner Union is fair and justified? To what relief Sri C. Udayashankar is entitled to?”

3. The averments in the Claim Statement in ID 97/2015 are as below:

The Petitioner is an employee of the Respondent Company holding the designation of Traffic Superintendent and is working at its Booking Office at Egmore, Chennai. The petitioner is a member of the Air Corporation Employees Union (ACEU) and was the Secretary of Southern Region of the Union as on the date of reference of the dispute. ACEU is a Registered Union and is guided by the bye-laws of the Union amended from time to time. ACEU is an umbrella body representing the interests of all categories of non-technical employees. The election to the Southern Regional Council was held as per the direction of the Madras High Court and members were elected on 24.09.2009. In turn the members of the Regional Council elected the Office Bearers and Committee Members of the Southern Region on 15.02.2010. The petitioner was elected as the Regional Secretary of the Southern Region. In May 2010, following a strike, the services of 42 employees of the Respondent including the petitioner were terminated and the Union was de-recognized and all office premises were sealed and check-off facility of collection of subscription through salary was withdrawn. The Central Executive of the Union passed a resolution on 22.06.2010 to the effect that the Office Bearers of various units of the ACEU will continue to function in their respective capacities in spite of the termination from the service of the Respondent. The Central Office of ACEU is regularly filing mandatory Form “D” returns. The petitioner continued to be mentioned as the Regional Secretary in the said forms. The termination of the petitioner was revoked in July 2011. In a proceeding before the Hon’ble High Court of Delhi the Respondent informed that the Union was re-recognized. However, the Union Office of the petitioner continued to be under seal and check-off facility for subscription was not restored also. With the malafide intention to factionalize the union the Respondent addressed the letter of re-recognition to one Arun Kumar Malhotra addressing him as President fully knowing that he was not even a member of the Union. As Regional Secretary the petitioner has to meet various employees and members to sort out their issues with the Respondent. The Regional Secretary is permitted to be away from the designated place of work as he has to attend the grievances of the employees. While allocating work and duties to employees the Officers of the Respondent are instructed to accommodate the legitimate activities that the petitioner has to perform as Office Bearer of the Union. The Respondent issued Show Cause Notice to the petitioner on 08.08.2013 on the ground of absence of duty in the afternoon hours of May 2013. A Charge Sheet for absence from duty was issued to the petitioner without authentication of his claim as Regional Secretary of the Union. The petitioner has filed a Writ Petition in respect of the enquiry proceedings held on the basis of the Charge Sheet dated 29.11.2013. The Hon’ble High Court has passed an order of injunction restraining the Enquiry Officer from proceeding with the Charge Sheet. The Writ Petition is still pending before the High Court. In spite of fully aware of the credentials of the petitioner as the elected Regional Secretary of the Union the Respondent has foisted charges of *locus-standi* and is restraining the petitioner from carrying out his functions as the Regional secretary of the Southern Region of the Union. At the same time the Respondent has bestowed rights and privileges to unelected individuals. The petitioner is eligible for the rights and privileges as the elected representative of the Union, in order to enable him to carry out his duties as Regional Secretary of the Union. An Award may be passed holding that the Charge Sheet dated 29.11.2013 questioning the authority of the petitioner as the duly elected Regional Secretary of the Union and restraining him from carrying out his duties as Office Bearer of the Union is not justified.

4. The Respondent has filed Counter Statement contending as below:

The issue raised by the petitioner does not fall within the purview of Industrial Dispute as the matter is not connected to the employment or non-employment or the terms of employment or with the conditions of labour of any person under Section-2(k) of the Industrial Dispute Act and is not listed in the Second and Third Schedule of the ID Act. The dispute is to be rejected for this reason itself. The petitioner was appointed by the erstwhile Indian Airlines Ltd. in July 1989. The Air Corporation Employees Union was a registered Trade Union recognized by the Management of erstwhile Indian Airlines Ltd. It has its Central office at New Delhi with General Secretary and Central President and Regional Offices in the four regions of erstwhile Indian Airlines Ltd. The petitioner was the Regional Secretary of the Union at Chennai from 16.02.2010. One J.B. Kadian was the General Secretary of the Union. In May 2010 the Respondent Airlines faced a tragedy on 22.05.2010 wherein it crashed at Mangalore resulting in the death of passengers and crew members. In spite of this, on 24.06.2010 the ACEU led by its General Secretary and the petitioner,

the Regional Secretary declared an illegal strike. Another Union also went on strike. These flash strikes crippled the operations of the Airlines. There were major flight disruptions. To restore normalcy and to instill confidence among the travelling public several leaders of ACEU including the petitioner were terminated from the service of the Company w.e.f. 26.05.2010. The Union was de-recognized also on 26.05.2010, for violating the terms of recognition. The facilities extended to the de-recognized unions were withdrawn and their offices were sealed. Re-recognition was granted to ACEU on 15.07.2011. Arun Kumar Malhotra has informed the Management that he was elected as the General Secretary of the Union. He has informed the Chief Labour Commissioner about the election of Office Bearers to the Central Executive of the Union. He has also communicated a list of the Office Bearers of the Southern Region. The Regional Committee comprised of one Dhanabalan as Chairman and Kirubakaran as Regional Secretary. Kirubakaran has informed that the election to the Office Bearers of the Regional Committee was held on 23.10.2013. The petitioner was reinstated in service on the basis of an undertaking given by him. Initially he was posted at Mangalore. Considering his request he was brought to the original post of Traffic Superintendent at Chennai. After getting reinstated the petitioner claimed to be Regional Secretary of the ACEU, Chennai and raised two Industrial Disputes. The Respondent has informed the petitioner in these disputes that he has no locus-standi to represent its Union as the General Secretary. The petitioner or J.B. Kadian were not in employment of the Respondent on the date of re-recognition of ACEU. So the question of recognizing the petitioner as the General Secretary of the Union did not arise at that time. During the period from June 2013 to September 2013 the petitioner was leaving the work premises after 13 hours without any permission and was not available for allocation of duties in the post-lunch session on the pretext that he is the Regional Secretary of the Union. A memo was issued to him on 08.08.2013 calling for his explanation. He had submitted his reply to the Memo. On considering the reply the Competent Authority issued Charge Sheet to him on 29.11.2013 on the charge of leaving the work premises without permission, etc. While enquiry was proceeding against the petitioner he had filed Writ Petition No. 22045/2014 before the High Court of Madras and had obtained an interim injunction order against proceeding with the enquiry. In view of the order of injunction no further action has been taken by the Respondent on the Charge Sheet. Subsequently, through the process of Secret Ballot Election for recognition of Trade Unions were conducted throughout the network of Air India on 19th and 20th August, 2015 where in the faction led by Arun Kumar Malhotra and the faction led by Kadian participated in the election. The faction led by Kadian having obtained more votes, this faction has been accorded recognition as the main union. On getting recognition Kadian who is the General Secretary has furnished the list of Office Bearers of the Regional Bodies wherein the petitioner has been shown as the Central President of the Union at the Central Level and Regional secretary of the Union at the Regional Level. The Management is now dealing with the petitioner as its Central President and Regional Secretary. The Charge Sheet dated 29.1.2013 was issued to the petitioner not questioning his authority as the Regional Secretary but on the charge of leaving the work place without permission. The Respondent will be proceeding under the Charge Sheet after the High Court vacates the interim order. The petitioner is not entitled to any relief

5. The contentions raised in the Claim Statement in ID 98/2015 are the same as that of ID 97/2015. The contentions raised in the Counter Statement in this ID are also similar to that in ID 97/2015. In fact the schedule of reference in both cases also are similar. It is not known why two disputes are raised regarding the same cause of action. Since both cases are similar in nature and parties are the same joint trial has been allowed in these matters.

6. The petitioner has filed a common rejoinder after joint trial was allowed, denying the allegations in both Counter Statements and reiterating the case in the Claim Statements.

7. Evidence has been recorded in ID 97/2015 treating this as the main case. The evidence consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W20 and Ext.M1 to Ext.M22.

8. The points for consideration in the two IDs are:

- (i) Whether the action of the Management, if any in not allowing the petitioner to function as Secretary of Southern Region of ACEU is justified?
- (ii) What, if any is the relief to which the petitioner is entitled?

The Points

9. The petitioner was working as the Traffic Superintendent of the Respondent at its Booking Office in Chennai. In the year 2010 he has been the Chennai Region Secretary of ACEU of which he was a member. The Union was de-recognized consequent to the strike that had ensued soon after an air accident involving the airlines of the Respondent. The petitioner and several Office Bearers of the Union were terminated from service w.e.f. 26.05.2010. The Respondent had restored recognition to the Union on 15.07.2011. The petitioner and others who had been terminated from service were reinstated also in May 2011. The stand of the petitioner is that he continued to be the Regional Secretary of the Union in spite of his termination. According to the Respondent, at the time of re-recognition of the Union the petitioner was not in service at all. He was reinstated in service only later. He is said to have lost his

membership and positions in the Union consequent to his termination from service. According to the Respondent only an employee of the Respondent is entitled to be a member of the Union. Once he ceases to be an employee there is an automatic cessation of the membership of the Union and other positions in the Union also. It is the further case of the Respondent that at the time of re-recognition of the Union Arun Kumar Malhotra was the President at the national level and he had informed that election to the Southern Region had taken place and one Kirubakaran has been elected as the General Secretary of the Southern Region. Thus according to the Respondent the petitioner had no authority to act as the General Secretary of the Union. The Respondent was dealing with another set of Office Bearers as the duly elected Office Bearers of the Union.

10. The present disputes have arisen consequent to the Respondent issuing Charge Sheet to the petitioner on the basis that he had absented from work without permission during after lunch session from May 2013. The stand of the petitioner is that he has the privilege of meeting the members of the Union and the employees of the Respondent to deal with the issues involving the Respondent and as per the settlement itself he is entitled to be away from his place of work during afternoons. The proceedings regarding the Charge Sheet issued to the petitioner on the basis that he had absented from duty is at the enquiry stage. The petitioner has taken the matter before the High Court on the issue of not permitting him to examine the witnesses and the proceedings has been stayed by the High Court. It is an issue totally different from the one revealed as per the two orders of reference herein. In spite of this, the petitioner has claimed in the Claim Statement that the Charge Sheet dated 29.11.2013 questioning the authority of the petitioner as the duly elected General Secretary of the Union is to be quashed. This Tribunal has no power to quash the Charge Sheet and there is no question of an adjudication regarding the Charge Sheet at this stage also. The Charge Sheet has been issued against the petitioner in his personal capacity on the basis that he had absented himself from duty without permission. Whether the petitioner was entitled to any exemption in his capacity as the Regional Secretary of the Union as claimed by him and was entitled to be away during working hours is a matter entirely to be decided while proceeding with the enquiry on the Charge Sheet. However, the question whether the petitioner was the Regional Secretary of the Union at the time when the Charge Sheet was issued does arise in this dispute. Though in the prayer portion of the Claim Statement the petitioner has not raised this issue in the proper manner, he has referred to this grievance in the previous paragraphs. He has stated that he has been restrained from carrying out the functions as the Regional Secretary of the Southern Region while these rights are bestowed on unelected individuals who do not have the mandate of the employees. In fact the only issue that is revealed through the schedule of reference is whether the Respondent is justified in not allowing the petitioner to function as the Secretary of the Southern Region of the Union.

11. At present the petitioner is not deprived of his authority to function as the Regional Secretary of the Union. However, his present right is on the basis of the election that has been conducted subsequently. It is admitted in the Counter Statement itself that the faction of the Union led by Kadian has won the election and this faction has been recognized as the Union and the petitioner has been elected as the Regional Secretary as well as the President at the Central Level. The petitioner now seems to be acting as the Regional Secretary without any objection from the Respondent.

12. The case of the petitioner is that even at the time when the Charge Sheet was issued against him he was the Regional Secretary of the Union and he was having certain rights and privileges in this capacity and it was accordingly he was absent from duty during the period mentioned in the Charge Sheet. On the other hand according to the Respondent Arun Kumar Malhotra was the President of the Union at the National Level at the time and the list sent by him giving the names of Office Bearers of Chennai Region gave another name as the Regional Secretary and in fact he was the Regional Secretary. To controvert this position Ext.W3 has been produced by the petitioner. This is the interim order in a suit filed before a Delhi Court by Arun Kumar Malhotra alleging that his name was not included in the electoral roll of ACEU and also in the final list of candidates for the post of Regional Council, etc. This application filed under Order 1 & 2 of CPC has been dismissed by the Court on the ground that he has lost his status as a member. This is the order dated 13.06.2004. The petitioner has not stated what subsequently happened to the main suit itself. However, the matter has been under consideration in subsequent litigations also, as seen from the documents produced by the Respondent. J.B. Kadian who was the President while the petitioner was the General Secretary had filed Suit No. 453/2013 before the Delhi Court seeking to restrain Arun Kumar Malhotra and his associates from representing themselves as the Office Bearers of the Central Executive of the Regional Committee of the Delhi Region, etc and also from interfering with or causing any hindrance in the working of the Union, conduct of the elections of the Union, etc. J.B. Kadian, the plaintiff in the suit had obtained an interim order of injunction in his favour from the Delhi Court. Arun Kumar Malhotra had filed appeal against this. Ext.M9 is the order in MCA 10/2013 filed by Arun Kumar Malhotra. By this order the injunction order obtained by Kadian was reversed and the interim injunction application was dismissed. A Writ Petition has been filed before the Delhi High Court challenging this order. However, the suit itself was dismissed for non-prosecution and consequently the Writ Petition was also disposed. According to the Respondent this suit having not been restored the order passed by the Appellate Court holds good as the same has not been overruled by any Court. In Ext.M9, the order by the Appellate Court, it is stated that at the time when re-recognition was granted to the Union Kadian was not in the service of the Respondent and so his claim that he is the

Office Bearer of the Union is a tainted one. It is further stated that the question regarding the issue of membership of association, etc. can be examined and decided only by evidence. However this was only an interim order. Probably to overcome the above observation the petitioner has referred to the decision of the Apex Court in BOKAJAN CEMENT CORPORATION EMPLOYEES UNION VS. CEMENT CORPORATION OF INDIA LTD. reported in 2004 1 LLN 20 where it was held that in the absence of any provision in the constitution of a Trade Union for automatic cessation of membership as a result of cessation of employment it cannot be held that an employee would cease to be a member of the Trade Union in such an eventuality. However, if there is any interse dispute between the members of the Union, between the factions of the Union or between the Unions the Civil Court is having jurisdiction to consider the issue and not the Industrial Forum. For this reason this Court is not competent to look into the matter. In any case it will arise in the disciplinary proceedings now pending against the petitioner as an incidental issue, while dealing with the main issue. This Tribunal cannot consider it in these references, the issues under references having been settled.

In view of the foregoing discussion, the petitioner is not entitled to any relief. The references are answered against the petitioner. An Award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 15th May, 2017).

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri C. Udayashankar

For the 2nd Party/Management : MW1, Sri Y.J. Manuel

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	16.11.1989	Certificate of Registration alongwith updated Byelaws
Ext.W2	12.08.1994	Memorandum of Settlement
Ext.W3	28.06.2004	Orders in Suit 313/2014, dismissing claim of Arun Kumar Sharma to be included in Voter List of ACEU
Ext.W4	11.09.2009	Orders of the Madras High Court in OA 929/09 in CS 791/09 appointing Adv. Commissioner Poongudran for conduct of elections along with results of elections
Ext.W5	16.02.2010	Letter intimating office bearers
Ext.W6	23.02.2010	Letter seeking introductory meeting with Management
Ext.W7	15.03.2010	Letter intimating meeting between Management Headquarters and ACEU
Ext.W8	22.06.2010	Resolutions of the Central Executive directing continuation of function of Regional Committees of all regions along with annual From "D" return filed with Registrar Trade Unions from 2010 and 2014
Ext.W9	18.08.2011	Letter from N. Purushothaman to Management informing fabrication of documents
Ext.W10	08.11.2011	Letter from Ganesh Ram to Management informing fabrication of documents
Ext.W11	08.08.2013	Show-Cause Notice issued to the petitioner
Ext.W12	16.08.2013 & 26.08.2013	Reply notice by petitioner to show-cause Notice
Ext.W13	17.09.2013	Election Notification and Letter to Management to Facilitate Election
Ext.W14	10.10.2013	Letter to Dy. Chief Labour Commissioner (Central), Chennai referring dispute
Ext.W15	29.11.2013	Charge Sheet issued to the petitioner
Ext.W16	16.12.2013	Letter to Dy. Chief Labour Commissioner (Central), Chennai referring dispute
Ext.W17	29.01.2014	Letter from Assistant Labour Commissioner (Central)

Ext.W18	10.02.2014	Letter to Dy. Chief Labour Commissioner (Central), Chennai
Ext.W19	02.05.2014, 05.06.2014 & 13.06.2014	Proceedings before the Dy. Chief Labour Commissioner (Chennai), Bangalore
Ext.W20	13.08.2014	WP 22045/2014 filed by Petitioner alongwith typeset

On the Management's side

Ex.No.	Date	Description
Ext.M1	16.02.2010	List of Office Bearers of ACEU
Ext.M2	26.05.2010	Termination Order of Sri C. Udayashankar
Ext.M3	26.05.2010	De-recognition of Air Corporation Employees Union
Ext.M4	11.05.2011	Appointment of Justice Dharmadhikari Committee
Ext.M5	20.02.2012	List of Office Bearers of ACEU issued by Sri Arun Kumar Malhotra, General Secretary
Ext.M6	23.10.2013	List of Office Bearers of ACEU, Southern Region issued by Sri L. Kirubakaran
Ext.M7	11.05.2011	Appeal for reinstatement of Sri C. Udayashankar
Ext.M8	29.07.2011	Re-instatement Order of Sri C. Udayashankar
Ext.M9	17.12.2013	Court Order in MCA No. 10 of 2013
Ext.M10	29.09.2011	Joining Report of Sri C. Udayashankar
Ext.M11	-	Copy of Writ Petition No. 28989 of 2013
Ext.M12	29.11.2013	Charge sheet issued to Sri C. Udayashankar
Ext.M13	13.12.2013	Reply of Sri C. Udayashankar to the charge sheet
Ext.M14	07.02.2014	Appointment of Enquiry/Presenting Officer
Ext.M15	-	Enquiry Proceedings
Ext.M16	-	Copy of Writ Petition No. 22045 of 2014
Ext.M17	06.06.2015	Secret Ballot Election Committee Report
Ext.M18	25.09.2012 15.11.2012 26.11.2012 21.04.2014	Letters to ALC (C) in different IDs taking a stand that C. Udayashankar has no locus-standi
Ext.M19	26.08.2016	Secret Ballot Election Results 2015
Ext.M20	06.11.2016	List of new office bearers subsequent to the elections held in 2015 issued by Sri J.B. Kadian, General Secretary
Ext.M21	13.01.2016	Letter to Sri C. Udayashankar calling him for a meeting with CMD
Ext.M22	31.03.1976	Revised Guidelines on facilities extended to Union/Association representatives.

नई दिल्ली, 21 जून, 2017

का.आ. 1543.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, नेशनल इंस्टीट्यूट ऑफ टेक्नोलॉजी, सुंदरगढ़ एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 39/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.05.2017 को प्राप्त हुआ था।

[सं. एल-42012/48/2009-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 21st June, 2017

S.O. 1543.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 39/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, National Institute of Technology, Sundargarh and their workman, which was received by the Central Government on 03.05.2017.

[No. L-42012/48/2009-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present :

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 39/2009

Date of Passing Order – 30th March, 2017

Between :

The Director,
National Institute of Technology,
At./Po. Rourkela, Sundargarh ...1st Party-Management

(And)

Shri Khirendranath Barik,
House No. 14, Jena Building,
Shakti Nagar, Rourkela ...2nd Party-Workman

Appearances :

None	...	For the 1 st Party-Management
Shri K.N. Barik	...	For Himself the 2 nd party-workman

AWARD

The Government of India in the Ministry of Labour in exercising its powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the present dispute between the parties named above with the schedule:-

“Whether the action of the management of National Institute of Technology, in terminating the services of Shri Khirendranath Barik w.e.f. 19.6.2008 is legal and justified? If not, what relief the workman is entitled to?

for its adjudication vide their letter No. L-42012/48/2009-IR(DU), dated 05.11.2009.

2. The case of the 2nd party as emerges from his statement of claim is that he was appointed in the Metrological Engineering Department of the Management for the period from 19.2.1997 to 12.7.1999 without any remuneration for doing various jobs like electrical maintenance of furnace and other equipments, operation of induction furnace, helping/conduct of experiments fuel technology laboratory and polymer laboratory. An experience certificate to that effect was issued by the Head of the Department of Metrological Engineering. Pursuant to an advertisement of the Management for engagement of unskilled worker on daily wage basis he filed an application for such post and after issue of corrigendum in regard to such advertisement he was appointed on temporary basis for 44 days as a skilled worker in the said metrological department with effect from 13.7.1999 and thereafter he continued as such till August, 2006 and he was being paid a consolidated amount towards his monthly remuneration for such appointment. It is also claimed by him that the Registrar of the Management issued a circular on 17.4.2006 prohibiting extension of their contractual engagement after 30th June, 2006. Despite such circular he was allowed to work in the metrological department of the Management till August, 2006. According to the disputant workman he and some others were disengaged in the month of Sept., 2006 whereas 22 new candidates were given appointment against the post of Multi Trade library information etc. with effect from 4.9.2006 to do the jobs to which they were doing. It is his averment that,

though he worked for more than 240 days continuously in a year from July, 1999 to August, 2006 he was disengaged without notice pay and compensation in violation of provisions of Section 25-F of the Act and new candidates were given employment in violation to the provisions of Section 25-H of the Act. His disengagement being illegal and unjustified due to infraction of Section 25-F and 25-H of the Act he is required to be reinstatement with back wages and other service benefits as well as his service is to be regularized.

3. Being noticed the Management appeared and filed their written statement refuting the claim of the disputant workman on a contention that he was never engaged in between 19.2.1997 to 12.7.1999. He was attending the department on request of his father to learn various works. The posts/vacancies available in various departments of the Management is required to be filled up by the process of recruitment duly noticed through advertisement and recruitment test. As such question did not arise to give engagement/employment to the disputant workman as claimed by him. His engagement, if any, was purely on intermittent, temporary and daily wage basis to meet the shortage of man-power. His employment was for a specific period and in this regard there was an agreement between the Management and the disputant workman and the engagement letter specified the period of his engagement. Therefore, there was no question of his disengagement with effect from 01.09.2006. Term of his employment as per the agreement was completed and no extension was given to him. As such no notice or compensation as contemplated under section 25-F of the Act are required to be complied with. That being the position the claim of the disputant workman has no merit and as such the reference is to be answered against the disputant-workman. After filing of the written statement the Management did not take any step and as such, it was set ex parte.

4. The disputant workman has filed his evidence in examination in chief in form of sworn affidavit as per Order 18 Rule 4 C.P.C. and he has exhibited certain documents in support of his engagement and receipt of wages. The oral testimony of the disputant workman is the repetition of his averments advanced in his statement of claim. Though, he has claimed to have been engaged in between February, 1997 to July, 1997 without any remuneration, not a single scrap of paper has been filed in support of such oral claim. His appointment letter under Ext.-6 & 7 clearly indicates his employment for 44 days with effect from 13.7.1999. No other document or official letter is filed except copies of attendance register and wage disbursement orders and distribution of work sheets to show that his initial engagement for 44 days was extended to an indefinite period. On the other hand, the pleadings advanced by the disputant workman in his statement of claim go to reveal that the Management invited applications on 11.3.1999 for engagement of unskilled worker on daily wage basis for 25 days in a month and pursuant to such advertisement and corrigendum issued in continuous to such advertisement he was appointed on daily wage basis for the work of skilled worker for 44 days initially. It appears from his statement of claim as well as pleadings advanced in the written statement of the Management that his temporary appointment for 44 days was extended from time to time. His pleading and evidence to the effect that Registrar of the Management issued a circular dated 7.4.2006 prohibiting further extension of contractual engagement after 30th June impliedly indicates that his appointment as a casual skilled worker on daily wage basis was for a specific period. The period of his engagement being completed the action of the Management as alleged by the disputant workman cannot be said to have violated the provisions of Section 25-F of the Act. It cannot be over-sighted that as per the settled principles set out by the Hon'ble Apex Court more particularly in the case between Rajasthan State Ganganagar S. Mill Ltd., -Versus- State of Rajasthan and another reported in Civil Appeal No. 5969/2004 and in the case of Chief Soil Conservator, Punjab and others –Versus- Gurmal Singh reported in 2009-III-LLJ-352 SC the onus lies on the disputant workman to prove that he had completed 240 days of work in the 12 months preceding the date of alleged termination and so also his employment. The Section 2-oo of the Act defines the word “retrenchment” which means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but, does not include termination of service of the workman as a result of non-renewal of contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behave contained therein. The term of temporary employment of the disputant workman having been completed/expired on August, 2006 question does not arise on the part of the Management to disengage/terminate the disputant workman after compliance of the statutory provisions of Section 25-F of the Act. As the term of contract employment was expired/completed question does not arise on the part of the Management to terminate the service of the disputant workman. Thus, the action of the Management for not giving extension of employment to the disputant workman cannot be termed as retrenchment and the same cannot be held illegal or unjustified. The action of the Management, if any, for not giving extension cannot also be challenged in the eye of law. As the appointment was for a specific period the employer is not required to give notice pay or compensation as required under section 25-F of the I.D. Act.

5. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 21 जून, 2017

का.आ. 1544.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, प्रूफ प्रायोगिक प्रतिष्ठान व अन्य, चांदीपुर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 50/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.05.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 21st June, 2017

S.O. 1544.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 50/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in Annexure, in the industrial dispute between the employers in relation to the Director, Proof Experimental Establishment & others, Chandipur and their workman, which was received by the Central Government on 03.05.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present :

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 50/2014

Date of Passing Order – 31st March, 2017

Between :

1. The Director,
Proof Experimental Establishment,
Chandipur.
 2. M/s. Vita Communication,
Ex-Contractor, PXE, Chandipur.
 3. M/s. Muktananda Enterprises
Present Contractor, PXE, Chandipur
- ...1st Party-Managements

(And)

Shri Ranjan Kumar Satpathy,
At. Bali Postal Colony, Po. Balia,
Dist. Balasore

...2nd Party

Appearances :

- | | | |
|--------------------|-----|--|
| None | ... | For the 1 st Party-Managements. |
| Shri R.K. Satpathy | ... | For the 2 nd party. |

AWARD

This award arises out of an application preferred under section 2-A(2) of the I.D. Act by Shri Ranjan Kumar Satpathy whereby prayer has been made for directing the Management of Director of PXE DRDO, Chandipur, Balasore and its Contractors namely M/s. Vita Communication and M/s. Muktananda Enterprises to reinstate him with all back wages and other service benefits with effect from October, 2013.

2. The case of the applicant as emerging from his statement of claim is that he was appointed/engaged in the establishment of DRDO, Chandipur, Balasore in the month of August, 2008 through contractors Management No. 2

and 3 to maintain telephone lines in the establishment of the Management No. 1. Maintenance of telephone lines in the establishment of the Management No. 1 was entrusted to contractors through tendering process. According to him Management No. 2 M/s. Vita Communication was given work order and he was engaged as a contract labour to maintain the telephone lines and he worked there as such till the month of October, 2013 when the Management M/s. Muktananda Enterprises was issued with work order of maintaining the telephone line. It is his case that though contractors are being changed from time to time, the contract labour remains the same. On changing of the contractor M/s. Muktananda Enterprises he was removed from the service without all statutory compliance as required under section 25-F of the Act. It is his further claim that work orders are being issued to contractors in paper transactions only though he continued to work there from August, 2008 to October, 2013 when he was refused employment by M/s. Muktananda Enterprises. Accordingly he raised a dispute before the labour machinery and as no conciliation was effected by the labour machinery a certificate was issued in that regard. Hence he is compelled to prefer the present application for his reinstatement and other service benefits resorting to the provisions of Section 2-A(2) of the I.D. Act.

3. On being noticed the Management No. 1 submitted its written statement at the initial stage of the proceeding and thereafter did not participate in the proceeding for which it was set ex parte. The Management No. 2 and 3 contractors having failed to response the notices of the Tribunal in this regard are set ex parte. It is the stand of the Management No. 1 in its written statement that it had entered into a contract with M/s. Vita Communication, Balasore for providing maintenance service of telephone lines through tendering process in the year 2008. Thereafter M/s. Muktananda Enterprises, Balasore entered into a contract with the Management No. 1 in October, 2013 for maintaining the telephone lines. The contractors are engaging contractual labourers to carry out the contract work and as such it has no nexus with the employment/engagement of the applicant in its establishment. It is his further stand that the applicant was never under their pay roll and under direct control and supervision. Hence, the application is not maintainable against its establishment.

4. As the Managements failed to attend the proceeding of the case ex parte evidence in form of sworn affidavit has been filed by the applicant under Order 18 Rule 4 C.P.C. and argument was heard from the side of the applicant only. The examination in chief of the applicant filed in form of sworn affidavit is the repetition of his pleadings taken in his statement of claim. Though, certain documents have been filed by the applicant along with his statement of claim and affidavit evidence none of them is related to his appointment as a telephone lineman or in any capacity. From the pleadings and evidence of the applicant it is crystal clear that work of maintenance of telephone line was being given to contractors through tendering process and question does not arise on the part of the Management No. 1 to issue appointment letter or to give appointment/employment to the applicant. The Xerox copies of documents like experience certificate, I.D. Card etc. go to indicate that the applicant was engaged on contractual basis and the gate pass was issued for his entry to the premises of the Management No. 1. They do not establish the claim of the applicant that he was engaged/employed by the Management No. 1. As per the settled principles of the Hon'ble Apex Court initial onus of proving that he was employed by the Management No. 1 and he worked continuously lies on the applicant. Mere oral assertions/pleadings in this regard is not sufficient to allow him to avail relief under the provisions of the I.D. Act. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court/Tribunal to come to the conclusion that a workman had, infact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for the above period was produced by the applicant. The burden can be discharged by adducing cogent evidence, both oral and documentary. In the above back-drops of settled principles the evidence of the applicant is not found cogent and sufficient to come to a conclusion that he was ever employed directly by the Management No. 1 or there was "employer and employee" relationship between him and the Management No. 1.

5. So far the liability of Management No. 3 M/s. Muktananda Enterprises is concerned there is no pleading or evidence on the part of the applicant that he was ever employed/engaged by the said contractor. Rather, it is coming forth from the pleadings and evidence of the applicant that on change of the contractor M/s. Victa Communication, Management No. 3 i.e. M/s. Muktananda Enterprises entered into the contract for maintenance of the telephone lines of the Management No. 1. As the applicant was never under the direct supervision and control of the Management No. 3 or his engagement being made by the Management No. 2, the Management No. 3 cannot be forced or directed for reinstatement of the applicant. On the other hand it appears that M/s. Victa Communication was entrusted to maintain the telephone lines for a specific period and on expiry of the contract period the engagement of the applicant comes to an end. His employment/engagement being for a specific period of the contract, it cannot be held that there was any infraction of Section 25-F of the Act. This being the position of the case refusal of employment or disengagement of the applicant from October, 2013 cannot be held in violation of Section 25-F of the Act.

6. Thus, for the reasons mentioned above the application of the applicant filed under section 2-A (2) of the Act being devoid of any merit stands rejected.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 21 जून, 2017

का.आ. 1545.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, सेंट्रल इंस्टिट्यूट ऑफ फ्रेशवॉटर एक्वाकल्चर, भुवनेश्वर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 29/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.05.2017 को प्राप्त हुआ था।

[सं. एल-42011/94/2015-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 21st June, 2017

S.O. 1545.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 29/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubneswar as shown in Annexure, in the industrial dispute between the employers in relation to the Director, Central Institute of Freshwater Aquaculture, Bhubneswar and their workman, which was received by the Central Government on 04.05.2017.

[No. L-42011/94/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 29/2015

Date of Passing Order – 31st March, 2017

Between :

The Director,
Central Institute of Freshwater Aquaculture,
Po. Kausalyagang, Bhubaneswar – 751 002 ... 1st Party-Management

(And)

The General Secretary,
CIFA Shramik Sangh,
At./Po. Kausalyaganga,
Bhubaneswar (Orissa) – 751 002 ... 2nd Party-Union

Appearances :

None ... For the 1st Party-Management

Shri D. Mallick ... For the 2nd party-Union

AWARD

The Government of India in the Ministry of Labour in exercising its powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the present dispute between the parties named above with the schedule:-

“Whether the action of the management of CIFA, Bhubaneswar in transferring the services of Shri D. Mallick from the post of electrician to Gardener w.e.f 22.11.2014 is legal and/or justified? If not, what relief the workman is entitled to?”

for its adjudication vide their letter No. L-42011/94/2015-IR(DU), dated 12.08.2015.

2. The case of the 2nd party-Union is that the disputant workman was engaged by the 1st Party-Management from April, 1994 as a casual labour along with some others. He and other casual labours numbering 28 have been given employees of temporary status as per the Scheme of the Government of India. The disputant workman having obtained electrical trade certificate and diploma engineering certificate from the competent authority and being issued experience certificate for electrical works was given job of electrical maintenance works and posted in electrical section of the Management. He was working in the said section from the very day of his engagement till 22.11.2014 when office order was issued directing him to work as a Gardner in the field under Firm and colony Management committee. The disputant workman being General Secretary of CIFA Shramika Sangha and being member of the Union was taking active parts in the Trade Union activity to protect the interest of the workmen of the 1st Party-Management. Several disputes were raised under his leadership before the labour machinery for protecting the interest of the employees of the Management. Some industrial disputes are still pending between the 2nd party-Union and the Management for adjudication before this Tribunal and the Hon'ble High Court. In that view of the matter there should not be any change of service condition of the disputant workman. Being aggrieved by the Trade Union activity of the disputant workman the Management transferred him from electrical section to the field during pendency of such disputes before the Tribunal and as such the said order of transfer is illegal, unjustified and unfair labour practice on the part of the Management. Hence, a dispute was raised before the labour machinery culminating to the present reference.

3. As the Management failed to make its appearance despite sufficiency of notice, it has been set ex parte.

4. The 2nd party-Union has examined the disputant workman and filed documents like failure report dated 23.6.2016 of R.L.C.(C), transfer order dated 02.11.2014 of the disputant workman, letter dated 20.1.2015 of the Union to the Director of the Management, letter dated 24.11.2014 of the disputant workman to the Director, letter dated 2.12.2014 of the Union to the Director CIFA, copy of the award in I.D. Case No. 57/2002 of CGIT, Bhubaneswar, office order dated 23.12.1998 of the Management, office order dated 6.8.2004, trade certificate issued in favour of the workman Shri Mallik, copy of the Diploma Certificate of the disputant-workman, copy of the experience certificate issued by the A.O. on 20.1.2014. information under R.T.I. Act received on dated 27.5.2015 to establish its claim. Perusal of the examination in chief filed in shape of sworn affidavit evidence of the disputant workman and the documents exhibited in the proceeding reveals that the disputant workman was engaged as a casual labourer initially and he was directed to work in the electrical section of the Management. Undoubtedly, the certificates under Ext.- 11 indicates that the disputant workman Shri Mallick is having some experience in electrical works. But no official paper or document is produced before the Tribunal to establish that he was posted as an Electrician or to carry out the job/work of an Electrician in the establishment of the Management. Rather it is emerging from the pleadings and the evidence of the disputant workman as well as the documents filed before the Tribunal that he and others were engaged as a temporary casual labourers on daily wage basis and their engagement was not against any sanctioned posts or designated posts. They have been conferred with temporary status and paid 1/30th of the pay of the minimum of the scale prescribed for Grade-D category at all of the Central Government pursuant to the award of this Tribunal passed in I.D. Case No. 57/2002. It is revealed from the said award that the disputant workman had adduced evidence in the earlier reference that he was engaged after a formal oral test without any letter of appointment and call letter. No written order assigning duties to him was also issued to him. It appears from the documents filed by the 2nd party-Union that the disputant workman was simply attached to the electrical section as a casual worker for operational of day to day activities of electrical maintenance work etc. Thus, his engagement being a casual labourer with a conformant of temporary status is not against any sanctioned or designated post and his such engagement was not based on account of his possessing any special qualification relating to electrical works. Therefore there is no bar to the Management to transfer the disputant workman from one section to another section of the Management to discharge the work of a casual labour. As the disputant workman was engaged-employed as a temporary casual labour without any specific assignment and his employment was on need basis for doing casual labour work it cannot be said that there was a change of his service condition by assigning him to do firm work. In the above facts and circumstances the order dated 22.11.2014 of the Management directing the disputant workman to work in the field under Firm Management Committee is not illegal and unjustified and the same needs no interference.

5. Accordingly the reference is answered negatively to the dispute raised by the disputant workman and hence, he is not entitled to any relief.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 21 जून, 2017

का.आ. 1546.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, सबूत और प्रायोगिक प्रतिष्ठान, चांदीपुर, बालासोर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 56/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.05.2017 को प्राप्त हुआ था।

[सं. एल-14011/19/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 21st June, 2017

S.O. 1546.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 56/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubneswar as shown in Annexure, in the industrial dispute between the employers in relation to the Director, Proof & Experimental Establishment, Chandipur, Balasore and their workman, which was received by the Central Government on 15.05.2017.

[No. L-14011/19/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present :

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 56/2014

Date of Passing Order – 31st March, 2017

Between :

The Director,
Proof & Experimental Establishment,
Chandipur, Balasore-756025 ...1st Party-Management

(And)

The General Secretary,
All Orissa Military Engineer
Service Karmachari Sangh,
Chandipur, Balasore, Orissa – 756 025 ...2nd Party-Union

Appearances :

None	...	For the 1 st Party-Management.
Shri H. Barik	...	For the 2 nd party-Union

AWARD

The Government of India in the Ministry of Labour in exercising its powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the present dispute between the parties named above with the schedule:-

“Whether the employer can change the weekly off days thereby not changing the total number of weekly working days and weekly off days, yes or no. If no then what relief should be extended to the workmen in the instant case.

for its adjudication vide their letter No. L-14011/19/2014-IR(DU), dated 29.10.2014.

2. In nutshell, the case of the disputant workman espoused through the Union is that he has been working in the establishment of the Management since 18.11.1991 as a permanent employee. He has been discharging his duties with all sincerity, devotion and honesty to the best satisfaction of his authority. The establishment of the Management being a Central Government organization is functioning five working days in a week observing Saturday and Sunday as holidays. But, the Management changed the off days of the disputant workman and insisted his presence in the establishment on Saturday. When he made a representation for such change of service condition, the Management has

become vindictive towards him. It has been alleged that the disputant workman is not paid full monthly wage/salary though, he attends his duty regularly. Deduction is made from his entitled monthly salary alleging that he remained absent from duty. It has been alleged that the disputant workman is not paid full wages from June, 2013 onwards for which he raised a dispute before the Asst. Labour Commissioner (Central), Bhubaneswar. The failure of the labour machinery in arriving a conciliation between the parties culminated the present reference.

3. Though, the Management made his appearance in the initial stage of the proceeding and took time to file its written statement, it did not take any steps in subsequent stage of the proceedings for which it has been set exparte. As such the reference is heard exparte in absence of the Management. The 2nd party-Union has examined the disputant workman as a witness and filed several correspondences in support of the claim of the disputant workman.

4. The reference is made for adjudication of the dispute whether the action of the Management of PXE, Chandipur changing the weekly off days of the disputant workman without changing the total number of his weekly working days is legal and justified? And if not to what relief should be extended to the disputant workman. On a mere reading of the statement of claim filed by the Union and evidence adduced by the disputant workman, nothing seems to have been pleaded either in the claim statement or in the oral testimony of the workman to establish that as per job chart he was required to attend his duties five days in a week excluding public holidays on Saturday and Sunday. On the other hand the grievances as emerging from the statement of claim and oral testimony of the disputant workman are related to non-payment of full wages to the disputant workman despite his assertions that he had been attending his duties as per the official requirements. Not a single scrap of paper is filed to show that as per the terms and conditions of the appointment letter the disputant workman is required only to perform duty five days in a week and the Management has no authority/jurisdiction to change his working days in a week. Similarly, no paper is produced prohibiting the Management to change the duty hour or working days of the workmen engaged in its establishment. Change of duty, assignment of work, duty hours and working days of an individual workman/employee are the matters of administration of the Management and the Tribunal is not expected to interfere in the internal administration of the Management unless it is established that such change of duty, assignment and working days have been made in violation of the provisions of the I.D. Act. Neither the pleading nor the evidence of the 2nd party-Union is specific to show as to how the Management acted illegally in changing the weekly off days of the disputant workman. The allegation raised by the disputant workman in his testimony is mostly related to non-payment of full monthly wage to the disputant workman which is not the subject matter of reference. Law is well settled that the Tribunal/Labour Court cannot go beyond the terms of reference unless the same is incidental and ancillary to the dispute under reference.

5. That apart, it cannot be over-sighted that the Management is a defence organization of the Central Government and no evidence is advanced on behalf of the 2nd party-Union to establish that the Management is involved in the activity of trade and business/production or distribution of goods and services calculated to satisfy human wants and wishes. The Hon'ble Apex Court in the case of Bangalore water Supply & Swrage Board –versus- A.Rajappa and others (1978 II SCC 213) have laid down the triple tests to bring an establishment under the purview of "Industry" as defined under the Act by making following observations:-

"So we proceed to formulate the principles, deducible from our discussion, which are decisive, positively and negatively, of the identity of "Industry" under the Act. We speak, not exhaustively, but to the extent, covered by the debate at the bar and, to that extent, authoritatively, until overruled by a larger Bench or superseded by the legislative branch. "Industry" as defined in Section 2(j) and explained in Banerji, (supra), has a wide import.

Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale or Prasad or food), *prima facie*, there is an "Industry" in that enterprise.

Absence of profit motive or gainful objective as irrelevant, be the venture in the public, joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on employer-employee relations.

If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

xxx
xxx

xxx
xxx

xxx
xxx

The dominant nature test:

XXX
XXX

XXX
XXX

XXX
XXX

- (b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.
- (c) Even in departments discharging sovereign function, if there are units which are industries and they are substantially severable, than they can be considered to come within Section 2(j).
- (c) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby".

6. Thus, close reading of the above pronouncement of the Hon'ble Apex Court and other leading decisions of the Hon'ble Apex Court including the pronouncement made by the Hon'ble Apex Court in the case between State of U.P. – Versus- Jai Bir Singh in Civil Appeal No. 897/2002 it can be safely said that sovereign functions of the Government which mostly confined to "law and order" "defence", "law" making and "justice dispensation" are kept outside the purview of "Industry" as defined under the I.D. Act. Indisputedly, the 1st Party-Management is a defence organization and as such, the same does not come under the purview of "Industry" as defined under the Act.

7. For the reasons mentioned above the dispute raised by the disputant workman through All Orissa Military Engineer Service Karmachari Sangh Union appears to be devoid of any merit and doubt can also be entertained if the Management is coming under the purview of "Industry" as defined under the I.D. Act so as to enable the Tribunal to adjudicate the dispute. Hence the disputant workman is not entitled to any relief.

8. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 21 जून, 2017

का.आ. 1547.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राजस्थान परमाणु ऊर्जा स्टेशन, रावतभाटा, कोटा एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 60/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.05.2017 को प्राप्त हुआ था।

[सं. एल-42011/31/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 21st June, 2017

S.O. 1547.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 60/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in Annexure, in the industrial dispute between the employers in relation to the Rajasthan Atomic Power Station, Rawatbhata, Kota and their workman, which was received by the Central Government on 03.05.2017.

[No. L-42011/31/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

अनुबंध

केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 60 / 2014

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स नं. L-42011/31/2014- IR (DU) दिनांक 01/08/2014

The General Secretary,
Parmanu Vidyut Karmachari Union (CITU)
(CITU) Union Office, Phase-2,
Rawatbhata (Kota)-323307.

v/s

The Site /Director,
 Rajasthan Atomic Power Station,
 Rawatbhata, PO Anushakti
 Kota-(Rajasthan) 323303.

प्रार्थी की तरफ से : श्री जगदीश चन्द्र गुप्ता – एडवोकेट

अप्रार्थी की तरफ से : श्री धर्मन्द्र जैन – एडवोकेट

पंचाट

दिनांक : 30.03.2017

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 01/08/2014 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णय हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :-

“क्या परमाणु विद्युत कर्मचारी यूनियन, रावतभाटा (राजस्थान) की स्थल निदेशक, राजस्थान परमाणु बिजलीघर, आर.ए.पी.पी. (आर.आर.साइट) की रावतभाटा (राजस्थान) से श्रीमती मंजु कुमारी आमेटा, वार्ड-आया को ई.सी.जी. टैक्नीशियन के पद पर पदोन्नति की मांग न्यायोचित एवं तर्कसंगत है? यदि हां तो श्रीमती मंजु कुमारी आमेटा, वार्ड-आया किस राहत के एवं कब से अधिकारी है?”

2. स्टेटमेन्ट ऑफ क्लेम में दिये गये तथ्य के अनुसार प्रस्तरवार प्रार्थी यूनियन का कथन है कि :-

1. यूनियन इस प्रकरण से सम्बन्धित श्रमिक का प्रतिनिधित्व करती है एवं क्लेम प्रस्तुति हेतु अधिकृत है।
2. विपक्षी नियोजक संस्थान, न्युकलीयर पॉवर कारपोरेशन लिमिटेड की एक इकाई है। न्युकलीयर पॉवर कारपोरेशन, परमाणु ऊर्जा विभाग, भारत सरकार का उपक्रम है तथा भारत के संविधान के अनुच्छेद 12 के अन्तर्गत “राज्य” की परिभाषा में आता है।
3. श्रमिक श्रीमती मंजु कुमारी आमेटा की नियमित नियुक्ति विपक्षी नियोजक संस्थान में दिनांक 21.5.1997 से वार्ड-आया ‘ए’ के पद पर की गयी। प्रार्थिनी को दिनांक 01.11.2001 से हेल्पर “डी” के पद पर पदोन्नति दी गयी तथा अस्पताल कार्य सहायक “बी” के रूप में पदस्थापित किया गया।
4. श्रमिक की विपक्षी संस्थान में नियमित नियुक्ति दिनांक 21.5.1997 से वार्ड-आया ‘ए’ के पद पर की गयी। दिनांक 01.11.2001 से उसे हेल्पर ‘डी’ के पद पर पदोन्नति दी गयी एवं इसी क्रम में दिनांक 01.11.2004 से हेल्पर बी-सी के पद पर पदोन्नति दी गयी।
5. श्रीमती मंजु कुमारी आमेटा एक परिश्रमी और उद्यमशील श्रमिक है अतः श्रमिक को उसके उत्कृष्ट कार्य, व्यवहार एवं वरिष्ठता के आधार पर सभी पदोन्नतियां दी गईं। श्रमिक अपने कार्य में ज्ञानवर्धन व कार्य क्षमता में बढ़ोतरी हेतु प्रयासरत रहती है। श्रमिक द्वारा स्वाध्याय से वर्ष 2010–2011 में अखिल भारतीय टैक्नोमेडिकल्स संस्थान, गाजियाबाद द्वारा आयोजित ‘मेडिकल ई.सी.जी. टैक्नालाजी’ परीक्षा उत्तीर्ण की गई। इस परीक्षा हेतु श्रमिक द्वारा विपक्षी नियोजक संस्थान से पूर्वानुमति ली गई। श्रमिक द्वारा स्वाध्याय व उद्यम से अर्जित तकनीकी योग्यता प्राप्त करने की सूचना विपक्षी नियोजक संस्थान को दी गई।
6. विपक्षी नियोजक संस्थान के अस्पताल में ‘ई.सी.जी. टैक्नीशियन’ का पद रिक्त है। वर्ष 2011 में श्रमिक अपनी कार्य क्षमता एवं वरिष्ठता के आधार पर पदोन्नती की पात्र थी। श्रमिक को आशा थी कि उसे उसकी योग्यता के आधार पर ‘ई.सी.जी. टैक्नीशियन’ के पद पर पहले से ही रिक्त स्थान पर पदोन्नति दी जायेगी किन्तु श्रमिक को पदोन्नति दिनांक 1.7.11 से अस्पताल कार्य सहायक के पद पर ही दी गई जबकि वह ‘ई.सी.जी. टैक्नीशियन’ पद पर पदस्थापन की पात्र है।
7. प्रार्थी यूनियन द्वारा इस सम्बन्ध में मांग किये जाने पर विपक्षी नियोजक संस्थान द्वारा यह कहा गया कि श्रमिक को परीक्षा हेतु अनुमति देने के साथ ही यह स्पष्ट कर दिया गया था कि अर्जित की गई योग्यता के आधार पर उन्हें पदोन्नति लाभों का दावा करने का कोई भी अधिकार नहीं होगा किन्तु साथ ही यह भी स्वीकार किया गया कि विपक्षी नियोजक संस्थान के पदोन्नति प्रतिमानों में वार्ड-आया से ‘ई.सी.जी. टैक्नीशियन’ के पद पर पदोन्नति का कोई प्रावधान नहीं था किन्तु अब मुख्यालय द्वारा इस सम्बन्ध में जारी आदेश दिनांक 24.6.13 पर विचार किया जा रहा है जिसके अनुसार अस्पताल कार्य सहायक पद पर कार्यरत श्रमिकगण को टैक्नीशियन श्रेणी में पदोन्नति दिये जाने हेतु आवश्यक प्रक्रिया प्रारम्भ किये जाने के निर्देश दिये गये हैं।

यहां पर यह भी उल्लेख किया जाना प्रासंगिक है कि आदेश दिनांक 24.6.13 को इस टिप्पणी के साथ जारी किया गया है कि अस्पताल के कार्य सहायकों हेतु बहु आयामी निपुणता के विकास और पुनर्नियोजन सम्बन्धी दिशा निर्देशों में कोई प्रावधान नहीं था, जबकि अन्य सहायक श्रेणियों हेतु उपयुक्त प्रावधान अस्तित्व में था। इन सभी आयामों पर विचार कर सक्षम प्राधिकारी द्वारा अस्पताल कार्य सहायकों को भी प्रशिक्षण योजना सम्बन्धी दिशा निर्देश दिनांक 17.6.11 के अनुसार पदोन्नति पर सोच—विचार कर अवसर प्रदान करने हेतु संस्थीकृति प्रदान की गई है। इससे स्पष्ट है कि सक्षम प्राधिकारी द्वारा अस्पताल कार्य सहायकों हेतु कोई प्रशिक्षण/ पदोन्नति योजना न होने की कमी की गम्भीरता को अनुभव किया गया और उसे दूर करने हेतु आदेश जारी किये गये।

8. उपरोक्त प्रस्तर 7 में वर्णित तथ्यों से स्पष्ट है कि अस्पताल कार्य सहायकों को पूर्व में प्रचलित प्रशिक्षण योजना संबंधी दिशा निर्देशों के लाभों से वंचित रखे जाने की स्थिति को उचित और न्यायपूर्ण नहीं पाया गया और उन्हें भी इस योजना का लाभ दिये जाने हेतु आदेश जारी किये गये जिन पर विचार किया जा रहा है। इससे स्पष्ट है कि अस्पताल कार्य सहायकों को भी बहु आयामी निपुणता के विकास और पुनर्नियोजन/ पदोन्नति का अवसर प्रदान किया जाना समुचित पाया गया।

प्रार्थी यूनियन द्वारा की गई मांग भी तथ्यात्मक रूप से सक्षम प्राधिकारी द्वारा जारी आदेशों पर विचार किये जाने का अनुरोध है। रिक्त स्थानों पर उपयुक्त तकनीकी योग्यता प्राप्त अस्पताल में कार्यरत कार्य सहायकों को पदोन्नति के अवसर दिये जाने पर सोच—विचार किया जाना न केवल सम्बन्धित कर्मचारियों के लिए हितकारी है अपितु संस्थान के विकास हेतु भी महत्वपूर्ण है। श्रमिक “श्रीमती मंजु कुमारी आमेटा” भी ऐसे अवसर पाने की पात्र है। अनुभवी और तकनीकी योग्यता प्राप्त श्रमिकों की क्षमताओं का उपयोग न केवल अस्पताल की कार्य क्षमता बढ़ाने में उपयोगी होगा अपितु अस्पताल के लाभार्थियों के लिए भी हितकर होगा।

9. यहां उल्लेख किया जाना भी उपयुक्त है कि आधुनिक प्रबन्धन की विकास अवधारणाओं के अनुसार कर्मचारियों को प्रगति/विकास के अवसर दिये जाने अवश्यक है तथा उन्हें ज्ञानवर्धन व कार्य क्षमता में बढ़ोतरी हेतु प्रेरित किया जाना भी महत्वपूर्ण है।

इन्ही अवधारणाओं के अनुरूप यह भी स्थापित है कि पदोन्नति हेतु सोच विचार (Consideration) के अवसर प्रदान किया जाना ‘राज्य’ सेवा में कार्यरत श्रमिकों का मूल अधिकार है। संविधान के अनुच्छेद 16(1) में वर्णित ‘नियोजन’ शब्द में पदोन्नति संबंधी अवधारणा भी अन्तर्निहित है। समान अवसर का इस सन्दर्भ में अर्थ है कि जो भी कर्मचारी पदोन्नति का पात्र है और सोच विचार के परिमण्डल (Zone of consideration) में आता है उसे पदोन्नति हेतु सोच विचार का अवसर पाने का मूल अधिकार है। यदि ऐसा अवसर पदोन्नति हेतु नहीं दिया जाता है तो यह निश्चित ही उसके मूल अधिकार का उल्लंघन है।

स्पष्ट है कि श्रमिक श्रीमती मंजु कुमारी आमेटा को पदोन्नति हेतु सोच विचार का अवसर ही प्रदान नहीं किया गया। अतः विपक्षी नियोजक की यह कार्यवाही संविधान के अनुच्छेद 16(1) के अन्तर्गत प्राप्त मूल अधिकार का उल्लंघन है और निरस्त किये जाने योग्य है।

10. विपक्षी नियोजक संस्थान के बहु आयामी निपुणता के विकास और पुनर्नियोजन संबंधी दिशा निर्देशों में अस्पताल के कार्य सहायकों के संबंध में प्रावधान नहीं किया जाना जबकि अन्य सहायक श्रेणियों हेतु उपयुक्त प्रावधान किये गये थे, अस्पताल के कार्य सहायकों जिसमें श्रमिक श्रीमती मंजु कुमारी आमेटा भी सम्मिलित है, के साथ भेदभावपूर्ण और मनमाना व्यवहार है जो कि संविधान के अनुच्छेद 14 व 16 के अन्तर्गत प्राप्त विधि के समक्ष समानता, विधिक प्रावधानों से प्राप्त संरक्षण और राज्य सेवा में सभी नागरिकों को प्राप्त अवसरों की समानता के मूल अधिकार का उल्लंघन है तथा निरस्त किये जाने योग्य है। अन्त में प्रार्थना की गयी है कि श्रीमती मंजु कुमारी आमेटा वार्ड—आया को ई.सी.जी. टैक्नीशियन के पद पर दिनांक 1.11.11 से पदोन्नति एवं पदोन्नति के परिणामी लाभ प्रदान करने का आदेश प्रदान किया जाए।

11. वादोत्तर में याचिका के प्रस्तर 1 ता 5 के कथन को स्वीकार किया गया है। प्रस्तर 6 ता 10 के कथन को अस्वीकार किया गया है। अतिरिक्त कथन में कहा गया है कि प्रार्थिनी की प्रथम नियुक्ति वार्ड—आया हैल्पर ‘ए’ के पद पर की गयी थी जिसे नियमानुसार सहायक ‘डी’ के पद पर पदोन्नति दी गयी। प्रार्थिनी सन् 2011 में नियमानुसार पदोन्नति हेतु पात्र नहीं थी परन्तु उसके बाद अस्पताल में कार्यरत सहायक कर्मचारियों को ट्रेनिंग किये जाने के आधार पर उनका ट्रेक बदलने की योजना लागू की गयी। इस योजना के अनुसार प्रार्थिनी की स्कीनिंग करने के बाद उसे प्रशिक्षण दिया गया। इस प्रशिक्षण को सफलतापूर्वक प्रार्थिनी द्वारा पूरा करने के बाद आदेश दिनांक 30.6.15 द्वारा उसे टैक्नीशियन ‘ए’ ई.सी.

जी. के पद पर नियुक्ति दी गयी जिसे प्रार्थिनी ने बिना विरोध स्वीकार कर लिया है। आगे यह कहा गया है कि विधि का यह सुस्थापित सिद्धान्त है कि केवल पद रिक्त होने तथा कर्मचारी के पास योग्यता होने के आधार पर उसे पदोन्नति नहीं दी जा सकती।

12. आगे कथन है कि यूनियन की मांग नियमानुसार न होने के कारण नहीं मानी गयी एवं जब नियमों में संशोधन हुआ इसके बाद ही 30.6.15 के आदेश द्वारा नियुक्ति दी गयी। प्रार्थिनी के साथ कोई भेदभाव अथवा मनमानी व्यवहार नहीं किया गया जो संविधान के अनुच्छेद 14 व 16 के विपरीत हो। समस्त कार्यवाही संस्थान के सेवा नियमों के अनुसार की गयी है, अतः याचिका हर्जा सहित खारिज की जाय।
13. दिनांक 22.2.17 को पत्रावली में जवाब प्रस्तुत किया गया। उभयपक्ष के विद्वान प्रतिनिधिगण ने लोक-अदालत में पत्रावली नियत करने के लिए अनुरोध किया। सुलह के प्रयास हेतु पत्रावली दिनांक 30.3.17 को लोक अदालत में निस्तारण हेतु नियत की गयी।
14. दिनांक 30.3.17 को पत्रावली लोक अदालत में प्रस्तुत हुई। उभयपक्ष के विद्वान प्रतिनिधि सुलह हेतु सहमत हुए। उभयपक्ष के विद्वान प्रतिनिधि ने सुलहनामा प्रस्तुत किया जो निम्नवत् है:-

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JAIPUR**

I.D. 60/2014

[Ref.No. L-42011/31/2014-IR(DU)] dated : 01/08/2014

The General Secretary
Parmanu Vidyut karmachari Union (CITU)
CITU Union Office, Phase-2,
Rawatbhata(Kota)-323307.

V/s

The Site Director
Rajasthan Atomic Power Station
Rawatbhata, PO Anushakti,
Kota (Rajasthan)- 323303.

Lok- Adalat

Dated :30.3.2017

In the above mentioned case it is respectfully submitted that case between the parties has been amicably settled and there is no dispute pending between the parties to be decided. Applicant has been promoted to the post of Technician-A, ECG.

It is, therefore, most humbly requested that case may be disposed in Lok-Adalat today on 30.3.2017.

(signature illegible in hindi)

(signature legible in hindi)

Representative of opposite party

Representative of Applicant

(Sh. Dharmendra Jain)

(Sh. Jagdish Gupta)

15. लोक अदालत में पत्रावली को निस्तारित करते हुए निम्न आदेश पारित किया गया:-

30.3.17 लोक अदालत

आज पत्रावली लोक अदालत में प्रस्तुत हुई। याची के विद्वान प्रतिनिधि श्री जगदीश गुप्ता, एडवोकेट, तथा विषय के विद्वान प्रतिनिधि श्री धर्मेन्द्र जैन, एडवोकेट, उपस्थित आये। उभयपक्ष अनुपस्थित रहे। उभयपक्ष के विद्वान प्रतिनिधि ने सुलहनामा संयुक्त रूप से प्रस्तुत किया। सुलह के शर्तों की पुष्टि एवं समर्थन उभयपक्ष के विद्वान प्रतिनिधि ने की। सुलहनामा स्वेच्छया प्रस्तुत किया हुआ पाया गया। सुलहनामे की तसदीक न्यायाधिकरण के समक्ष उभयपक्ष के विद्वान प्रतिनिधि ने की है। इस मामले को तदनुसार उभयपक्ष की तरफ से प्रस्तुत सुलहनामे के आधार पर निस्तारित किया जाता है। सुलहनामा दिनांकित 30.3.17 एवार्ड का अंश होगा।

16. न्यायनिर्णयन हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तदनुसार पारित किया जाता है।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 21 जून, 2017

का.आ. 1548.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रबंध निदेशक, स्कूटर इंडिया लिमिटेड, लखनऊ एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 24/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.06.2017 को प्राप्त हुआ था।

[सं. एल-42011/156/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 21st June, 2017

S.O. 1548.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 24/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in Annexure, in the industrial dispute between the employers in relation to the Managing Director, Scooters India Limited, Lucknow and their workman, which was received by the Central Government on 13.06.2017.

[No. L-42011/156/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 24/2012

Ref.No. L-42011/156/2011 IR(DU) dated 05.01.2012

BETWEEN :

Sri Pradeep Kumar Dubey
Add. Shanti Nagar,
Sarojini Nagar,
Lucknow (U.P.)

AND

1. The Managing Director,
Scooters India Limited,
Sarjini Nagar, Lucknow (U.P.)

AWARD

1. By order No. L-42011/156/2011-IR(DU) dated 05.01.2012 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Sri Pradeep Kumar Dubey, Sarojini Nagar, Lucknow and the Managing Director, Scooters India Ltd., Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER ACTION OF MANAGEMENT OF SCOOTERS INDIA LIMITED, LUCKNOW IN NOT CONSIDERING THE APPLICATION OF WORKMAN SRI PRADEEP KUMAR DUBEY GRADE “D” DATED 30.11.1993 AND VOLUNTARY RETIRING HIM W.E.F. 30.11.1993 WITHOUT PAYING ENTIRE PENSIONARY BENEFITS IS LEGAL AND JUSTIFIED? WHAT RELIEF THE WORKMAN IS ENTITLED TO?”

3. As per the claim statement W-3 the petitioner has stated in brief that he has been working in the management office w.e.f. 6.8.77 in Gr. “D” Employee Code 04546. It has been alleged that the management in order to misguide the employees displayed a notice in the year 1992 that the Factory was running in losses and the employees willing for VRS may apply accordingly and their dues will be paid soon, although the wage revision was due w.e.f. 1.1.1992 but the company avoided it till the year 1996. Some people under the wrong advice given by the Union, submitted their resignation on 30.11.1993 but the petitioner did not apply, even then his name was wrongly added which was unjust. Revised wage demand w.e.f. 1.1.1992 to 11.1.1992 has not been paid to the workman; similar case was filed before

Labour Court, Lucknow by Sri S.K. Tewari against Scooters India which was decided in favour of the workman. With the aforesaid pleadings the workman has requested for his salary w.e.f. 1.1.1992 to 11.1.1994, alongwith LTC, Gratuity, ex-gratia payment etc. amounting to Rs. 40,000/-. He has further prayed for payment of ten times the amount due.

4. The management has filed written statement M-6, wherein preliminary legal objection has also been raised. The opposite party has submitted that the reference is highly belated, and the alleged dispute has been raised after a lapse of a period of 18 years, and the claim should be dismissed as being time barred. Several citations of Hon'ble Supreme Court Rulings have also mentioned in the Written Statement. The management has stressed that petitioner should have approached the Court/Tribunal with clean hands but material facts have been concealed by the petitioner.

5. The opposite party has asserted that the application for VRS was moved by the applicant on 30.11.1993 which was accepted on same day and his date of release was notified as 31.12.1993 vide order dated 8.1.1994; the applicant was informed and he was released on 11.1.1994. When dispute was raised under section 2A of the I.D. Act. before Conciliation Officer, all the facts were brought to the notice of the authority and the application was rejected accordingly. The petitioner workman filed a Writ Petition No. 2620(S/S) of 2000 Kapil Dev Ram and others Vs Scooters India Limited which was dismissed alongwith bunch of writ petitions vide judgment dated 8.2.2006 passed by Hon'ble High Court. Later on review petition no.76/2006 was moved which was also dismissed. Another case filed by Sri J.C.Nigam against Scooters India Ltd. has been referred in the written statement, which was dismissed on 9.1.1997, special appeal was decided on 18.12.2000. The management preferred SLP challenging the order dated 18.12.2000, which was converted by Hon'ble Supreme Court into Civil appeal no. 1089 of 2004 and the same was allowed vide judgment dated 12.2.2004 and the judgment dated 18.12.2000 passed by Divisional Bench of Hon'ble High Court, Lucknow bench, Lucknow was set aside. Being aggrieved from the judgment and order dated 12.2.2004 Sri J.C.Nigam preferred the review petition no. 747/04. Further curative petition no. 152/08 was preferred by Sri J.C. Nigam and the same has also been dismissed by the Constitution Bench of Hon'ble Supreme Court vide its judgment dated 20.1.2009, thus the dispute has already been decided by the competent court of law and principle of res-judicata applies into the matter in issue.

6. The management has asserted that in the year 1992, the company was facing problems including surplus of man power, and was incurring huge losses, the matter was referred to BIFR, it declared the company as a sick industrial unit vide order dated 11.12.1992, direction was given by BIFR to reduce the surplus man power, thereafter VRS Scheme was introduced for employees with certain additional benefits. The opposite party has further submitted that financial position of the company was very bad during the period in question, wage revision could not take place and the petitioner is not entitled to get the benefit of wage revision, moreover he is not entitled to get the same without wage revision which was effected on that date when the petitioner was not on the role of the company. At present also the position of the company is very poor and matter has been referred to BIFR vide memo dated 501/10 dated 26.2.2010. With the aforesaid submissions, the management has requested to adjudicate the matter in its favour.

7. The petitioner has not elaborately given reply to specific facts mentioned by the opposite party in its written statement. Brief rejoinder W-7 has been filed by him.

8. The management has filed certain documents as per list M-8. Affidavit W-9 has been filed by the workman in evidence. He has been thoroughly cross examined on behalf of the management.

9. The management has filed affidavit M-21 in its evidence. Copy was furnished to the workman. The workman, made an endorsement, on the order sheet of the case file on 27.10.2015 that he does not want to cross examine the management witness, rather he wants to argue the case on merit. Accordingly the case was fixed for hearing of both the parties.

10. Arguments of both the parties have been heard at length, Record has been perused.

11. Learned AR for the workman has relied upon the following citations;

1. Civil Appeal No.4099/02, 4100/02, 8837/03 Bank of India Vs Pale Ram Dhania. Hon'ble Supreme Court.
2. (2007) 8, SCC, FCI Vs Ramesh Kumar page 141.

12. Learned AR for the opposite party submits the following other Rulings, and asserts that the aforesaid pronouncements do not apply to the facts of the present case:

1. 2000 (84) FLR, NedunGadi Bank Ltd., Vs KP Madhavankutty & others page 673 Hon'ble Supreme Court.
2. 2003 (97) FLR, SM Nilajkar Vs TDM, Karnataka page 608 Hon'ble Supreme Court.
3. 2006 (110), FLR Manager RBI Vs Gopi Nath page 803 Hon'ble Supreme Court.

13. The aforesaid Rulings have been strongly objected by the workman on the ground that the principles propounded therein are not applicable to the fact of this case.

14. It is admitted to both the parties that the workman has been a employee under the administration of management. The workman specifically asserted that he had never moved application for VRS even then the alleged application purported to have been signed by him was considered by the management illegally and VRS was imposed on him. The management has elaborately submitted that company was not in good shape, it was facing huge loss, the matter was referred to BIFR, it was declared as a sick unit and thereafter VRS Scheme was introduced , consequently large number of employees including Sri PK Dubey opted for VRS which was considered and allowed, further in persuance there of entire benefits have been released in his favour which was duly accepted as well.

15. So called letter dated 30.11.1993 opting for VRS, has been filed but denied by the petitioner. The workman in his cross examination dated 23.1.2014, has accepted that the sum of Rs. 1,15,923.91 only was paid to him. He was further asked whether any objection was raised by him after receiving the sum. The workman replied he does not remember whether any objection was raised or not. He has admitted to have moved Hon'ble High Court but ignorance has been shown by him regarding the orders of Hon'ble High Court. He has also admitted that after his alleged VRS, "Hometown Allowance" was also paid to him.

16. The management has filed as per list M-8, copy of the order dated 8.2.2006 passed by Hon'ble High Court, Lucknow bench, Lucknow wherein it has been observed by Hon'ble High Court hat the petitioner themselves had approached the schme "VRS" and had accepted all the benefits; after accepting all the benefits after lapse of long time had tried to raise the dispute. The petition was dismissed. Further review petition no. 76/2006 has also been dismissed vide order dated 13.5.2008. The management has filed copy of the order dated 12.2.2004 passed by Hon'ble Supreme Court whereby the SLP were dismissed, review petition was also dismissed on 28.4.2004. Curative petition 152/08 was also dismissed by Constitution Bench of Hon'ble Supreme Court.

17. In the said circumstances how the matter of VRS can further be agitated by the petitioner workman, through this case, is beyond any legal justification or feasible appropriateness . This fact is also very important that the affidavit of management witness is uncontroverted. The workman or his learned AR has refused to cross examine the management witness.

18. After having heard the intellect arguments of both the parties and perusal of the record in the light of prouncements of Hon'ble Supreme Court, it is inferred that the matter of VRS for the workman w.e.f. 30.11.1993 and alleged non payment of certain dues, can not be adjudicated in favour of the workman. Any illegal or unjustified order has not been passed by the management. Accordingly, the workman is not entitled to any relief.

19. Award as above.

LUCKNOW

17.06.2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 21 जून, 2017

का.आ. 1549.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, प्रूफ प्रायोगिक प्रतिष्ठान, चांदीपुर, बालासोर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 28/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.05.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 21st June, 2017

S.O. 1549.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 28/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubneswar as shown in Annexure, in the industrial dispute between the employers in relation to the Director, Proof Experimental Establishment, Chandipur, Balasore and their workman, which was received by the Central Government on 04.05.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present :

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 28/2013

Date of Passing Order – 29th March, 2017

Between :

The Director,
Proof Experimental Establishment,
Chandipur, Balasore ... 1st Party-Management

(And)

Shri Hemanta Kumar Barik,
S/o. Mayadhar Barik,
Ulanda, Po. Barabati, Balasore ... 2nd Party

Appearances :

None	...	For the 1 st Party-Management.
Shri H. Barik	...	For Himself the 2 nd party

AWARD

This award is directed against an application under section 2-A(2) of the I.D. Act, 1947 (hereinafter referred to as the Act) preferred by Shri Hemant Kumar Barik for a direction to the Management of the Director, PXE, Chandipur, Balasore to declare him (the applicant) as a worker of its establishment and to provide him all benefits under the Factory Act.

2. Facts, in nutshell, giving rise to the present application are that the applicant joined in the organization of the Opp. Party on 18.11.1991 as a Barber. The Management is a recognized as a Laboratory Under D.R.D.O., New Delhi and it has been registered under the Factory Act, 1948. The Management has been granted Factory license bearing No. GL-37. The work of the Management is to conduct trial and evaluation of arms and ammunition manufactured in different factory. The establishment of the Management being purely factory under the Factory Act the applicant workman is to be treated as a worker and he is entitled to all benefits guaranteed under the Factory Act. Hence a prayer has been made for directing the Management to extend him all benefits provided under the Factory Act to a worker.

3. Being noticed the Management appeared and filed a petition for leave of the court to engage a lawyer to defend its case contending that its establishment is not an "Industry" as contemplated under the I.D. Act. Being an organization under the Ministry of Defence, Government of India it is not coming under the purview of "Industry" as defined under section 2(j) of the I.D. Act. The question raised by the applicant being a matter of interpretation of law, engagement of Standing Counsel of Central Government to defend the case is required. When the above petition was pending for filing of objection and hearing the Management failed to make its appearance for which it has been set ex parte.

4. In order to substantiate his claim the applicant has examined himself after filing his evidence in examination in chief in form of sworn affidavit and exhibited certain documents relating to his appointment and establishment of the Management. The oral testimony of the applicant before the Tribunal is only the repetition of the averment advanced in his statement of claim preferred as an application under section 2-A(2) of the Act. Thus it is seen from the pleadings and evidence of the applicant that the dispute raised by him is not related to his dismissal/retrenchment/refusal or otherwise termination. On the other hand Section 2-A(2) provides:-

2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute – (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any Union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

5. On a mere reading of the above provisions it is crystal clear that an Industrial Dispute can be agitated directly before the Tribunal by an individual workman only in a matter of dispute relating to his illegal discharge, dismissal, retrenchment or termination of service and otherwise and such dispute can be raised by filing an application directly before the Labour Court and the Tribunal for its adjudication after expiry of 45 days from the date of application to the conciliation officer of the appropriate Government for conciliation of the dispute and then only the Tribunal and the Labour Court have power and jurisdiction to adjudicate upon the dispute as if the same is referred to it by the appropriate Government in accordance with the provisions of the I.D. Act provided such application is filed within three years from the date of such alleged discharge, dismissal, retrenchment or otherwise termination of service. Be that as it may, there is no scope for a workman or an Union to make an application directly to the Labour Court or Tribunal for raising a dispute involving other issues than the dismissal/termination/retrenchment of a workman. In that view of the matter the application preferred by the 2nd party resorting to the provisions under section 2-A(2) is not at all maintainable in the eye of law since the dispute raised therein is not related to his dismissal/retrenchment/refusal/removal of service. That apart, no certificate from the labour machinery has been obtained that effort was made for conciliation of the matter and despite elapse of forty five days from the date of raising the dispute the conciliation cannot be held. Furthermore, doubt can be entertained if the organization of the Management is covered by the definition of "Industry" as contemplated under section 2(j) of the I.D. Act as no pleading and evidence has been advanced to the effect that the Management being involved in systematic activity organized by cooperation between employer and employee is engaged for production and/or distribution of goods and services calculated to satisfy human wants and wishes. The dispute being not related to dismissal/termination or retrenchment to an individual has not also been espoused through an Union as required under the Act. In the above facts and circumstances the application is totally devoid of any merit and it is not maintainable in the eye of law.

6. Hence the application filed under section 2-A(2) of the 2nd party is dismissed being devoid of any merit.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 21 जून, 2017

का.आ. 1550.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, सबूत और प्रायोगिक प्रतिष्ठान, चांदीपुर, बालासोर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 2/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.05.2017 को प्राप्त हुआ था।

[सं. एल-14011/25/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 21st June, 2017

S.O. 1550.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 2/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubneswar as shown in Annexure, in the industrial dispute between the employers in relation to the Director, Proof & Experimental Establishment, Chandipur, Balasore and their workman, which was received by the Central Government on 12.05.2017.

[No. L-14011/25/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 2/2015

Date of Passing Order – 3rd April, 2017

Between :

The Director,
Proof & Experimental Establishment,
Chandipur, Balasore-756025 ...1st Party-Management

(And)

The General Secretary,
All Orissa Military Engineer Service
Karmachari Sangh, Chandipur,
Balasore, Orissa – 756 025 ...2nd Party-Union

Appearances :

None	...	For the 1 st Party-Management
Shri H. Barik	...	For the 2 nd party-Union

AWARD

The Government of India in the Ministry of Labour in exercising its powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the present dispute between the parties named above with the schedule:-

“Whether the management snatch away the constitutional or legal right of exercising franchise in work committee election (which is a forum of works participation in management under Article 43-A of the constitution) only because, he has raised disputes before the different quasi judicial and judicial authorities pertaining to other personal issue? If not, then what relief should be extended to the workmen?

for its adjudication vide their letter No. L-14011/25/2014-IR(DU), dated 30.12.2014.

2. In nutshell, the case of the disputant workman as revealed from his statement of claim of the 2nd party-Union is that the disputant workman was appointed in Group-D category of employee with effect from 18.11.1991 and he was performing his duty from Monday to Friday till working day of the disputant workman was changed by the Management. As the disputant workman raised allegations against the whim and caprice of the administration of the Management, he was treated vindictively. Being a member of the All Orissa Military Engineer Service Karmachari sangh Union he was participating in casting his vote in the election of Work Committee of the Union. On the requisition of the Collector he was also deputed by the Management to perform election duty. As the Management was bearing grudge on him, his name was not forwarded to the office of the Collector, Balasore for his engagement in the election duty during the general election held in 2014. Hence, he raised a dispute before the labour machinery which ultimately culminated the present reference.

3. Though, the Management made his appearance in the initial stage of the proceeding and took time to file its written statement, it did not take any steps in subsequent stage of the proceedings for which it has been set exparte. As such the reference is heard exparte in absence of the Management. The 2nd party-Union has examined the disputant workman as a witness and filed several correspondences in support of the claim of the disputant workman.

4. Close reading of the statement of claim and oral testimony of the disputant workman reveals that the dispute was raised mainly when the disputant workman was not deputed for his deployment in election duty during the general election held in 2014. Not a single scrap of paper/document or official communication is filed to establish that the Management was duty bound to sponsor the name of the disputant workman for his deployment in election duty. No material is also placed before the Tribunal to show that such action of the Management is a violation of any term and service condition of the disputant workman warranting the same to be adjudicated under the provisions of the I.D. Act. That apart, it cannot be over-sighted that the Management is a defence organization of the Central Government and no

evidence is advanced on behalf of the 2nd party-Union to establish that the Management is involved in the activity of trade and business/production or distribution of goods and services calculated to satisfy human wants and wishes. The Hon'ble Apex Court in the case of Bangalore water Supply & Sewerage Board –versus- A.Rajappa and others (1978 II SCC 213) have laid down the triple tests to bring an establishment under the purview of “Industry” as defined under the Act by making following observations:-

“So we proceed to formulate the principles, deducible from our discussion, which are decisive, positively and negatively, of the identity of “Industry” under the Act. We speak, not exhaustively, but to the extent, covered by the debate at the bar and, to that extent, authoritatively, until overruled by a larger Bench or superseded by the legislative branch. “Industry” as defined in Section 2(j) and explained in Banerji, (supra), has a wide import.

Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale or Prasad or food), *prima facie*, there is an “Industry” in that enterprise.

Absence of profit motive or gainful objective as irrelevant, be the venture in the public, joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on employer-employee relations.

If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

XXX	XXX	XXX
XXX	XXX	XXX

The dominant nature test:

XXX	XXX	XXX
XXX	XXX	XXX

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign function, if there are units which are industries and they are substantially severable, than they can be considered to come within Section 2(j).

(c) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby”.

5. Thus, close reading of the above pronouncement of the Hon'ble Apex Court and other leading decisions of the Hon'ble Apex Court including the pronouncement made by the Hon'ble Apex Court in the case between State of U.P. – Versus- Jai Bir Singh in Civil Appeal No. 897/2002 it can be safely said that sovereign functions of the Government which mostly confined to “law and order” “defence”, “law” making and “justice dispensation” are kept outside the purview of “Industry” as defined under the I.D. Act. Indisputedly, the 1st Party-Management is a defence organization and as such, the same does not come under the purview of “Industry” as defined under the Act.

6. In the above back-drops, I am constrained to hold that the reference is not maintainable.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 21 जून, 2017

का.आ. 1551.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, हिंदुस्तान एयरोनॉटिक्स लिमिटेड, कोरापुट एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 19/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2017 को प्राप्त हुआ था।

[सं. एल-42011/132/2012-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 21st June, 2017

S.O. 1551.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 19/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubneswar as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Hindustan Aeronautics Limited, Koraput and their workman, which was received by the Central Government on 20.06.2017.

[No. L-42011/132/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 19/2013

No. L-42011/132/2012 – IR(DU), dated 25.02.2013

Date of Passing Order – 24th May, 2017

Between :

The General Manager,
Hindustan Aeronautics Limited, Po. Sunabeda,
Koraput ... 1st Party-Management

(And)

The General Secretary,
Hindustan Aeronautics Mazdoor Sangh,
At./Po. Sunabeda, Koraput ... 2nd Party-Union.

Appearances:

Shri A.K. Patra.	... For the 1 st Party-Management
None	... For the 2 nd Party-Union

ORDER

Authorized representative for the Management is present whereas, the 2nd party-Union is found absent on repeated calls. After filing of statements/pleadings by the parties and settlement of issues the case was fixed for evidence of the 2nd party-Union. The record further reveals that despite several adjournments from time to time the 2nd party-Union failed to make its appearance or to take any step to adduce its evidence in support of the dispute raised by it. In the above back-drops and in absence of the 2nd party-Union there is no alternative than to presume that either the Union has lost its interest to pursue the dispute for its judicial adjudication or there exists no further dispute between the parties. In the given situation I am constrained to return the reference to the Ministry for taking necessary action at their end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 21 जून, 2017

का.आ. 1552.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गैरीसन इंजीनियर (आई), आर एंड डी, चांदीपुर, बालासोर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 55/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.05.2017 को प्राप्त हुआ था।

[सं. एल-14011/18/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 21st June, 2017

S.O. 1552.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 55/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubneswar as shown in Annexure, in the industrial dispute between the employers in relation to the Garrison Engineer (I), R & D, Chandipur, Balasore and their workman, which was received by the Central Government on 12.05.2017.

[No. L-14011/18/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 55/2014

Date of Passing Order – 3rd April, 2017

Between :

The Garrison Engineer (I), R & D,
Chandipur, Balasore-756025,
Odisha

...1st Party-Management

(And)

The General Secretary,
All Orissa Military Engineer Service
Karmachari Sangh, Chandipur,
Balasore-756025, Orissa

...2nd Party-Union

Appearances :

None	...	For the 1 st Party-Management
Shri Pranabandhu Agasti	...	For the 2 nd party-Union

AWARD

This award arises out of a reference with schedule “ whether the applicant's past military wing job in the same capacity shall be taken for consideration of seniority and pension or not as the applicant is now in the same armed services in civilian side doing the same nature of job? If yes, then what relief should be extended/ Whether the applicants pay fixation is to be done from the date of initial employment in civilian wing or not? if not, then his pay protection is to be granted keeping his last pay pay in the military wing or not? If yes, then what relief?” made by the Government of India in the Ministry of Labour vide its letter No. L-14011/18/2014 - IR(DU), dated 29.10.2014 under its authority conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the I.D. Act, 1947 (herein after referred to as “Act”) keeping in view the dispute raised through Al Orissa Military Engineer Service Karmachari Sangh Union against the management of the Garrison Engineer (I) R & D, Chandipur.

2. In short, the case of the 2nd party-Union is that the disputant workman namely Pranabandhu Agasti was appointed as a MPA (semi skilled) on probation in the establishment of the Management of MES in the scale of pay of Rs. 800-15-1010-EB-20-1150/- on 7.3.1988 with headquarters at Kalaikunda. After completion of two years probation period he was placed in next higher pay scale in the skilled grade. Prior to his engagement in the Management he was enrolled in Army in February, 1981 and discharged from Army service with effect from 2.3.1987 and he worked there for six years. As per the circular of the Management he was required to exercise an option within a period of one year of his joining to count his past service for the purpose of service benefits in the Management of MES so as to enable him to receive his gratuity on the maximum length of service of 33 years at the time of his superannuation and other superannuation benefits. According to the 2nd party-Union the disputant workman was given understanding that his pay scale in skilled category would be fixed taking his past service into consideration. As such, his pay scale should have been Rs. 950-25-35-1500/- at the time of his initial joining in the Management. Despite his representation and request to enhance his pay scale and to count his past service for the purpose of service benefits, the Management did not pay

any heed to his request. Hence, he raised a dispute before the Asst. Labour Commissioner (Central) resulting in the reference as mentioned earlier. A prayer has been made in his statement of claim for a direction to the Management to redress his grievance within a specific time as no action is taken on the direction of Hon'ble Central Administrative Tribunal, Cuttack Bench in this regard.

3. Though, the Management filed its written statement on being noticed and resisted the claim of the 2nd party-Union, it did not take any steps in subsequent stage of the proceeding for which it has been set *ex parte*. In his written statement the Management has refuted the allegation of the disputant workman contending that the disputant workman is not coming under the purview of "workman" as defined under section 2(s) of the Act so also the Management is not coming under the purview of "Industry" as defined under section 2(j) of the Act. As such the Tribunal has no jurisdiction to entertain the statement of claim and to determine the dispute referred under section 10 of the Act. That apart, it has denied the claim taking a stand that Shri Agasti was required to exercise an option within one year of his joining for counting his former military service for his pay fixation and other benefits. As he applied belatedly more than one year after his joining, the matter was moved to C.D.A. Patna for counting of his former military service. Since the matter could not be taken into consideration without condonation of delay by the Government of India, Headquarter C.E. Eastern Command, Kolkatta was moved. In response headquarter C.E. Eastern Command, Kolkatta vide their letter no. 131970/Misc./1052/Engrs., dated 26th May, 2007 had intimated that the disputant workman had availed gratuity and he had not drawn pension. Two options are available to him. The individual can deposit the complete gratuity amount along with interest and claim gratuity for complete service in MES. If he does not want to deposit the gratuity with interest he can claim the gratuity only for his MES service. It is the further contention of the 1st Party-Management that the disputant workman did not refund the gratuity amount with interest and preferred a case bearing No. O.A. 355/2007 in the Hon'ble CAT, Cuttack Bench. The Tribunal disposed of the matter giving a direction to the Management to consider the appeal of the disputant workman and pass a reasoned and speaking order. Accordingly a reasoned & speaking order was passed by the Ministry of Defence and the same was communicated to the disputant workman. Thereafter the workman again moved the Hon'ble C.A.T. preferring an application bearing No. O.A. 412/2010. As per the direction of the Hon'ble C.A.T. the disputant workman deposited the gratuity amount on 18.6.2013 to which he received while leaving Army service. According to the Management the matter is under active consideration of Government of India, Ministry of Defence. The matter having been dealt by the Hon'ble C.A.T. the Tribunal has no jurisdiction to entertain the self same matter and the reference is bad in law.

4. As the Management failed to participate in the proceeding of the reference subsequent to its filing Written Statement *ex parte* evidence of the 2nd party-Union was taken and argument was heard from the side of the Union only. The disputant workman has adduced his evidence through a sworn affidavit under Order 18 Rule 4 C.P.C. and exhibited certain documents which are some official communications between him and his authority. His oral testimony in form of sworn affidavit is nothing more or less than the repetition of his stand taken in the statement of claim. In view of stand taken by the Management in its written statement regarding maintainability of the reference it is pertinent to mention here that that the Management is an establishment under the control of the Ministry of Defence. The pleadings and the evidence of the 2nd party-Union do not specify or lead to a conclusion that the Management is ever involved in activity of trade and business or production and/or distribution of goods and services calculated to satisfy human wants and wishes. Further, it cannot be ignored that after the pronouncement of the judgement by the Hon'ble Apex Court in the case of Bangalore Water Supply & Sewerage Board –versus A. Rajappa & Others, (1978) II SCC 213 an amendment is brought to the definition of "Industry" as defined under section 2(j) of the Act which is yet to be acted upon and notified. The Hon'ble Apex Court in the case of Bangalore Water Supply and Sewerage Board –Versus- A. Rajappa & Others have laid down triple test to bring an establishment/Organization under the purview of "Industry" as defined under the Act by making following observations:-

"So we proceed to formulate the principles, deducible from our discussion, which are decisive, positively and negatively, of the identity of "Industry" under the Act. We speak, not exhaustively, but to the extent, covered by the debate at the bar and, to that extent, authoritatively, until overruled by a larger Bench or superseded by the legislative branch. "Industry" as defined in Section 2(j) and explained in Banerji, (*supra*), has a wide import.

Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale or Prasad or food), *prima facie*, there is an "Industry" in that enterprise.

Absence of profit motive or gainful objective as irrelevant, be the venture in the public, joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on employer-employee relations.

If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

xxx	xxx	xxx
xxx	xxx	xxx

The dominant nature test:

xxx	xxx	xxx
xxx	xxx	xxx

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign function, if there are units which are industries and they are substantially severable, than they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby".

5. Thus, close reading of the above pronouncement of the Hon'ble Apex Court and other leading decisions of the Hon'ble Apex Court including the pronouncement made by the Hon'ble Apex Court in the case between State of U.P. – Versus- Jai Bir Singh in Civil Appeal No. 897/2002 it can be safely said that sovereign functions of the Government which mostly confined to "law and order" "defence", "law" making and "justice dispensation" are kept outside the purview of "Industry" as defined under the I.D. Act. Indisputedly, the 1st Party-Management is a defence organization and as such, the same cannot be covered by the definition of "Industry" as contemplated under the Act in view of the principle set out by the Hon'ble Apex Court in the case Bangalore Water and Sewerage Board – Versus- A. Rajappa.

6. That apart, it cannot be over-looked from the pleadings and evidence of the disputant workman that he had agitated his grievances before the Hon'ble Central Administrative Tribunal, Cuttack Bench, from time to time. It seems from the written statement of the Management that orders have been passed by the Hon'ble Central Administrative Tribunal on self same matter in different cases to which the disputant workman has not categorically denied or refuted. On the other hand his examination-in-chief submitted through sworn affidavit clearly reveals that the disputant workman had approached the Hon'ble C.A.T, Cuttack for the above purpose and the Hon'ble C.A.T. have ordered for taking his past service into consideration for the purpose of gratuity and other retirement benefits. In that view of the matter this Tribunal should not also give any findings on the merit of the dispute to avoid any contradictory findings by two separate statutory forums. When the disputant workman had approached earlier to the Hon'ble C.A.T., Cuttack Bench, time and again for his grievances and inspite of order of the Hon'ble C.A.T. in favour of the disputant workman, it is surprised as to why the workman has approached the labour machinery for addressing his grievance instead of moving the Hon'ble C.A.T. for compliance of its order. In the above back-drops I am constrained to hold that the reference is not maintainable. However, the disputant workman is at liberty to redress his grievances, if any, before the appropriate authority.

7. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 22 जून, 2017

का.आ. 1553.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 13/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/115/2005-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 22nd June, 2017

S.O. 1553.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2006) of the Central Government Industrial Tribunal-cum-

Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 22.06.2017.

[No. L-12012/115/2005-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/13 of 2006

EMPLOYERS IN RELATION TO THE MANAGEMENT OF
STATE BANK OF INDIA,

The Deputy General Manager
State Bank of India, Pune Zonal Office,
Gulmohar Apartments, East Street,
Opp. Bombay Garage
Pune

AND

THEIR WORKMEN

The Dy. General Secretary,
SBI Staff Union, C/o. U.P. Naik
No.68/86,
Harkoovarbai Building,
Pandit Bakhale Path,
Thakurdwar Road
Mumbai – 400 002.

APPEARANCES:

FOR THE EMPLOYER	:	Shri M.G. Nadkarni, Advocate.
FOR THE WORKMEN	:	Mr. M.B. Anchan, Advocate.

Mumbai, dated the 21st April, 2017

AWARD PART – I

1. The Government of India, Ministry of Labour & Employment by its Order No.L-12012/115/2005-IR(B-I) dated 16.02.2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of SBI, in imposing the penalty of terminating the services of B.M. Pawar is proper and legally justified ? If not, to what relief is the workman entitled to ?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party workman filed his statement of claim at Ex-5.

3. It appears that the second party workman is appointed in the bank service on 12.8.1985 as a Clerk-cum-Typist. While working as Clerk-cum-Typist at Igatpuri branch of the bank, he was suspended from service by order dated 1.12.1994 for alleged fraud at Igatpuri branch of forging withdrawals etc. Subsequently, he was served with charge sheet-cum-show cause notice dated 15.3.1996 for alleged misconduct. The charges have been framed against him and the bank issued him charge-sheet dated 20.6.96. The bank has also filed FIR with Igatpuri police station on 20.1.1995. The workman in his reply dated 6.5.1996 to the sheet-cum-show cause notice had denied the charges. The summary of charges framed against workman is as under.

A) Withdrawing on various dates varying sums of money from different Savings Bank Accounts of customers of the Bank's Igatpuri Branch by preparing forged withdrawals/forged signatures/Left Hand Thumb Impressions of the account holders, posting such withdrawal in the account of the customer, obtaining payments thereof from paying cashier, making fictitious credit entries in the accounts to facilitate such withdrawals, increasing the amount of withdrawals. The list of such instances / accounts has been mentioned in the Annexure to the Charge Sheet.

B) Issuing nine cheques on his own Saving Bank Account maintained at Igatpuri Branch for an amount aggregating to Rs.90,000/- in favour of his nephew (Shri Deepak Pawar) who had opened a Savings Bank Account with NMC Bank Ltd., accepting the cheques and initialing on the counterfoil of NMC Bank Ltd. which presented the cheques in question for payment, not entering the cheques in question in the Subsidiary Day Book and destroying the credit slips and accompanying cheques. Making bogus entries in the Pass Book of NMC Bank Ltd. and later on withdrawing the amount from his nephew's account opened with NMC Bank Ltd. Igatpuri Branch to which credit was given by the NMC Bank Ltd. on the strength of the entries made in their Pass Book.

C) Accepting credit slip of NDCC Bank Ltd., Igatpuri Branch along with cheque of Rs.696/- issued by him in favour of LIC, initialing the counterfoil of the NDCC Bank Ltd. but not entering the credit slip in the Subsidiary Day Book, keeping it in personal custody, making bogus entry in the Current Deposit (CD) Account Pass Book of NDCC Bank Ltd. Igatpuri Branch, on the strength of which the NDCC Bank Ltd. passed on the credit of Rs.696/- to LIC through Syndicate Bank.

4. The enquiry into the charges framed against the workman was conducted by Shri N.D. Tamhankar, Manager, SIB, Nasik who was appointed as Inquiry Officer. The enquiry was conducted ex-parte and the Inquiry Officer submitted his report. Defence Counsel of the concerned workman represented against the holding the said enquiry ex-parte and requested the disciplinary authority vide letter dated 11.1.1999 to treat the ex-parte enquiry as cancelled. Disciplinary authority ordered continuation of enquiry into the charges against the workman afresh and the decision of disciplinary authority was duly communicated vide letter dated 12.5.1999. Shri B.M. Gokhale was appointed as Inquiry Officer to conduct the enquiry. Inquiry officer thereafter conducted the enquiry into the charges leveled against the workman. The Inquiry Officer submitted the report dated 21.4.2003 in which he held as under.

- a) As regards Charge No.1, it was proved in the respect of transactions detailed at serial Nos. 1 to 7, 9, 12 to 27 of the Annexure to the Charge Sheet. It was however held not proved as regards transactions mentioned at serial Nos. 8, 10 & 11 of the said Annexure. Since, the charge was established in respect of 24 out of 27 transactions listed in the Annexure, the EO held that the Charge No.1 stood proved.
- b) Charge No. 2 was held proved.
- c) Charge No. 3 was held proved.

5. The disciplinary authority agreed with the findings of the Inquiry Officer. The disciplinary authority proposed imposition of punishment of termination of service with 3 months pay and the allowances in lieu of notice in terms of clause 3 (c) of the Memorandum of Bipartite Settlement dated 10.4.2002 for each of the charges separately and distinctly. Accordingly show cause notice dated 7.6.2003 was issued to the workman and he was called upon to show cause within 7 days of the receipt of the notice as to why said punishment should not be inflicted upon him. The workman submitted his reply dated 18.7.2003 to show cause notice dated 7.6.2003. He also availed personal hearing on 9.7.2003. After considering all the aspects the disciplinary authority passed his final order dated 8.9.2003 in which he confirmed the penalty of termination of service proposed by him earlier and passed order imposing the punishment of termination of service with 3 months pay and allowances in lieu of notice in terms of clause 3 (c) of the Memorandum of Bipartite Settlement dated 10.4.2002. The workman preferred an appeal dated 3.11.2003 to the Appellate authority and the Appellate authority passed the order dated 11.6.2004 rejecting the said appeal.

6. It is the case of the workman concerned that the branch Manager is biased against him and on his report the charges are framed against him. The copies of the documents in which charges have been framed against him have not been supplied. The charge-sheet does not disclose the date or the time of alleged misconduct of the workman. The Branch manager Mr. Shah had exposed all bank's records to other staff members and the same was not given or shown to the concerned workman inspite of demanding the same vide Ex.DEX 73 and Ex.DEX 74. In the enquiry Branch Manager Mr. Shah PW-15 in his cross-examination has stated that he is not aware of the basis of the charge-sheet. He also stated during cross-examination that he is not in a position to tell the purpose of enquiry. In the criminal court Mr. Shah had deposed that the contents of FIR may not be true. In the enquiry none of the complainants have been examined. Even in the investigation report it is clearly mentioned that customers did not lodge complaints despite persuaded by the Branch Manager and the members of the staff. The workman was also not disclosed the findings of the ex-parte enquiry held by the bank. The workman was honourably acquitted by the Criminal court on the evidence of same witnesses. Therefore the charges are baseless and issued with malafide intention.

7. It is also the case of a workman that the enquiry is held against the principles of natural justice. He was denied the opportunity to submit his explanation to the charge sheet. The enquiry is also vitiated on the point of delay in conducting the same. The documents called upon by him in the enquiry were not produced therefore the enquiry is against the principles of natural justice.

8. According to the workman he was honourably acquitted by the Criminal Court for the same alleged misconduct. He had produced the copy of criminal court's judgment when the enquiry was going on. He had requested the Inquiry officer and the disciplinary authority to cancel the enquiry since the charges are the same. However, the Inquiry officer proceeded with the enquiry stating that the workman was acquitted with benefit of doubt as such findings of the Inquiry officer are perverse.

9. According to the union, bank has held two enquiries for the same offence. First enquiry was held by Mr. Tamhankar and he has completed the enquiry and submitted his report to the disciplinary authority. Since Mr. Tamhankar has held ex-parte enquiry when the workman represented to the disciplinary authority against the ex-parte enquiry, bank set aside the earlier ex-parte enquiry and ordered the separate enquiry. There is no provision in Bipartite settlement to hold two enquiries for the same charges and on this ground the enquiry is vitiated.

10. It is also the case of a union that in the second enquiry after tutoring the prosecution witnesses the bank had improved the deposition of the prosecution witnesses to hold the workman guilty and even without proving the handwriting and without producing the vouchers the findings are given by the Inquiry officer. As such findings are perverse and enquiry is also vitiated.

11. It is then the case of a union that the charge No. 2 & 3 are also not proved in the enquiry. With regard to charge No.2 there is no mention of date and time of the commission of alleged misconduct mentioned in the charges. The cheques referred to in charge No.2 were not in possession of workman. There is no other evidence led on this charge. Alleged confessional statement of the workman are taken by force and durance. Regarding third charge of filling of the cheque for Rs.696/-, the charge was not proved in the enquiry. To prove the charge, Presenting Officer had examined Shri J.B. Patil. Shri Patil lied before the Inquiry officer and his statement cannot be relied on. As such the findings of the Inquiry officer regarding these charges is also perverse. Union is therefore asking to hold that the departmental enquiry held against the workman is against the principles of natural justice and the findings of the Inquiry officer are perverse.

12. First party bank resisted statement of claim by filing the written statement (Ex.6). It is contended that when any suspected fraud comes to light at the branch then the bank Manager takes help of the staff members to confirm the same. It does not amount to exposing the records to the members of the staff since such regards may not have assumed the status of relevant records at that point of time. As such allegations of the bias leveled against the Branch Manager are baseless. It is then contended that there is no requirement to provide the copies of the documents at the stage of replying the show cause notice. The bank however supplied the relevant documents to the workman during the course of enquiry so that he could defend his case. No prejudice whatsoever has been caused to the workman.

13. It is also the case of bank that the criminal trial conducted in the court of Chief Judicial Magistrate, Nashik and the disciplinary proceedings initiated against the workman are two separate and distinct proceedings. The purpose, nature and standard thereof are distinct and different. This aspect has been dealt by the Inquiry officer and even in terms of awards / settlements the enquiry can be initiated / conducted in the cases of acquittal in the criminal cases also.

14. It is then contention of the first party bank that the workman strongly protested against the holding of ex-parte enquiry by Shri Tamhankar vide his letter dated 11.1.1999 addressed to disciplinary authority mentioning therein that the ex-parte enquiry held against him amounted to denial of reasonable opportunity to him and the same was violative of principles of natural justice. Therefore, the disciplinary authority in order to afford more opportunity and fair proceedings ordered fresh enquiry and therefore ex-parte enquiry became non-est in the eyes of law. There was no question of furnishing copy of the Inquiry Officer's report of such but the same enquiry report is a matter of record. Therefore the enquiry does not vitiate.

15. It is contention that the workman had filed a regular civil suit in the court of CJJD Igatpuri seeking stay to the departmental proceedings during the pendency of criminal trial in the court of Judicial Magistrate, Nashik on the ground that it would be pre-judicial to his defence in criminal trial. He had also filed application for grant of temporary injunction against the holding of departmental enquiry. However, his application came to be rejected since he did make out prima-facie case. The workman even filed appeal in the court of Second Additional Dist. Judge, Nashik. The said appeal was also dismissed. In view of that the contention is that the concerned workman is benefitted by the delay in hearing of the departmental enquiry and no prejudice was caused to him. It is thus denied by the bank that the enquiry held against the workman was in violation of principles of natural justice. It is also denied that the enquiry is vitiated on account of delay in conducting the same.

16. It is contention of the bank that the Presenting Officer had provided the copies of documents and certified true copies of the same were made available to the workman for verification at the enquiry. The original were filed in the court of Magistrate in connection with the criminal proceedings. After the judgment in criminal case was pronounced the original documents became available and the same were produced for verification. Even the vouchers at Sr. No. 1, 2, 6, 7, 11 & 12 at Pg. 2 of the enquiry proceedings were not traceable and therefore the workman was not prejudiced on account of non-supply of vouchers in question. Even no prejudice was caused to the workman in respect of non

supply of counter foils of pay & slips in NMC Bank Ltd. since the original thereof were in the custody of NMC Bank Ltd.

17. It is then contention of the management that the aspect as regards committing mistakes in recognizing the hand writing of the staff members was dealt with by enquiry officer and it is made clear that the witnesses have recognized the hand writing of the workman so there is no perversity in findings of the Inquiry Officer. It is denied that the findings of the Inquiry Officer are perverse. It is thus case of the management that the enquiry into the charges leveled against the workman was conducted with scruples regard to the principles of natural justice and full opportunity was provided to the workman to establish his innocence. The findings of the Inquiry Officer are not perverse and hence the rejection of reference is sought for.

18. The union has adduced the evidence of the concerned workman Shri B.K. Pawar at Ex.29. Bank has adduced evidence of Shri Pramod Gokhale at Ex.31. After the evidence is closed, both the parties have filed written arguments at Ex.33, 40 & 41.

19. Following issues were framed at Ex.11. so far Part-I Award is concerned, I reproduce the issue No.1 along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the inquiry and findings recorded therein are legal and proper ?	Yes.

REASONS

Issue No.1:-

20. In respect of the enquiry proceedings, the Learned Counsel for the second party union contended that the charge sheet does not disclose the date of alleged misconduct by the concerned workman with specific clarity. It is further submitted that the copies of the documents were not provided to the concerned workman to enable him to reply the show cause notice. It is submitted that the Branch Manager of the bank was biased against the concerned workman and therefore the enquiry itself is vitiated.

21. However, on going through the documents in respect of enquiry proceedings, it appears that the copies of the documents were supplied and made available to the concerned workman during the course of enquiry. Even it appears that the concerned workman was permitted to verify the relevant records so that no prejudice would be caused to the concerned workman while defending his case of not furnishing the documents. If at the stage of replying to the show cause notice the documents are not given to him then that would be of no consequence but then after the charge sheet is given he is permitted to verify the relevant records and the relevant documents relied upon by him were made available to him. This is clear from the enquiry proceedings and therefore it can be said that no prejudice was caused to the concerned workman for defending his case on account of non-supplying of the copies. It is also made clear that the original documents were filed by the bank in the criminal court in the case filed against the concerned workman and when the bank has received the documents after the judgment in the said criminal case then the original documents were made available to him for verification of which the copies were already supplied to him during the course of enquiry.

22. As regards the contention of the workman that the charge was not specific since the charge did not mention specific date of misconduct, it can be said that the charge sheet mentions about the date of cheques and amount of the cheques in respect of which it is alleged that bogus credit entries were made in the relative pass book of NMC Bank Ltd. Specific date is given in the charge sheet in respect of the charge that Nasik Dist. Central Co-op. Bank Ltd. Igatpuri branch presented their credit slips and cheque of Rs.696/- issued to the concerned workman in favour of LIC India on the counter of SBI Igatpuri branch. That would show that the charge was specific. In respect of charge of withdrawing sums of money by preparing forged withdrawals, forging signature / left hand thumb impression of the account-holders etc., the charge mentioned that 9 cheques aggregated to Rs.90,000/- were issued by the concerned workman on his SB A/c. with Igatpuri branch. Even on going through the enquiry proceedings and the report of the Inquiry officer in respect of this charge, it can be seen that as regards withdrawals the specific and detailed mention of date, amount and the name of customer has been given in Annexure with the charge. Even in the observations of the Inquiry officer in respect of this charge of frequently withdrawing the amounts from various SB A/cs. by forging signature / left hand thumb impression of the account-holders etc. the name of 10 account holders, their account numbers and specific mention of the charge is given and the each instance appears to have been separately examined by the Inquiry officer who observed in his enquiry report that Charge No. 1/1, 1/2, 1/3, 1/4, 1/5, 1/6, 1/7, 1/9, 1/12, 1/13,

1/14, 1/15, 1/16, 1/17, 1/18, 1/19, 1/20, 1/21, 1/22, 1/23, 1/24, 1/25, 1/26 & 1/27 are proved and charge No. 1/8, 1/10 and 1/11 are not proved. That would also show that the charge sheet was specific and sufficiently explained to the concerned workman who has denied the same.

23. Then the contention of the workman is that the branch manager was biased against him and the charges were framed against him on the basis of branch manager's report. It is well settled that whenever the allegations as to the malafides have been leveled, sufficient particulars and cogent materials making out the prima-facie case must be set out in the pleadings. Vague allegations of the biased are bald assertion is not enough. Even burden of proving such malafides is on the person making allegations. On going through enquiry proceedings it appears that no evidence is adduced to make out the case of bias or malice attributable to the concerned branch manager.

24. I say so because it appears that the bank conducted the preliminary investigation in the matter before issuing show cause notice dated 15.3.1996 and the charge sheet dated 20.6.1996 to the workman. Even it appears that this aspect has been dealt with by the Inquiry officer on page 148 of his report Ex.17. It is then contention of the concerned workman that the bank manager had exposed all the bank records to other staff members and the same was not given to him inspite of demanding the same. It is contention that the said branch manager Shri Shah has deposed in the criminal court that the contents of the FIR may not be true.

25. In this respect also the Inquiry officer has dealt with this aspect in his report Ex.17. Even it appears from the copy of the judgment dated 20.12.1999 that no any question was put to the branch manager during his examination in chief about the contents of FIR Ex.102 and the branch manager did not specifically depose about the contents being untrue.

26. Even otherwise it is not permissible to make the use of the deposition of any witness recorded in criminal court while making averments of disciplinary proceedings. Both these proceedings can go simultaneously except where both the proceedings are based on same set of facts and evidence in both the proceedings is common. Obviously therefore the allegations of bias leveled against the branch manager on account that he exposed the bank records to other staff members is un-founded. It does not in any way demonstrate the bias of the branch manager towards workman.

27. Learned Counsel for the union submitted that the customer did not lodge any complaint despite being persuaded by the bank manager and the members of the staff. This aspect has also been dealt with by the Inquiry officer in his report at Sr. No. X & XI on page 118. Since it appears that the charge is based on the documentary evidence the report appears to have been lodged by the Branch Manager on the basis of documents of bank. Documentary evidence coupled with the statement of the concerned workman has been relied upon by the Presenting Officer and the observations of Inquiry officer are specific in respect of all these charges which are based on documents and the deposition made by the witnesses coupled with statement of concerned workman (PEX 8).

28. The Learned Counsel for the bank in this respect submitted that so far the customers are concerned they need not be involved in the domestic enquiry. He seeks to rely on the decision in case of State Bank of India V/S. Tarun Kumar Bannerjee and Ors. 2000 LAB I.C. 3166 wherein para 6 of the judgment it has been observed that the customer of the bank need not be involved in domestic enquiry conducted, as such course of action would not conducive to proper banker, customer relationship and therefore would not be in the interest of the bank.

29. It is therefore necessary to see whether the findings of the Inquiry officer are proper or perverse ?

30. The allegations against the concerned workman are that from SBA A/c. No. 12/20383 of Shri Ramesh Punjaji Wargade, he withdrew Rs.10,000/- on 9.11.93 by fraudulently signing the signature of the account holder and he received the cash of Rs.10,000/- by fraudulent means and deposited the cash in SB A/c. No. PP9/1780 of Shri Garur as a result Shri Garur withdrew the amount of Rs.10,000/- on 9.1.93 from his account.

31. The charge No.2 is that he withdrew Rs.15000/- by fraudulent signing the signature of account holder namely Shri Ramesh Punjaji Wargade on 12.2.94. Charge No.3 against him that he fraudulently withdrew the amount of Rs.10,000/- from the account of Shri Ramesh Punjaji Wargade on 25.2.1994 by putting forged signature on withdrawal slip and obtained cash payment by signing the reverse thereof. 4th charge against him that he withdrew Rs.20,000/- from account of Shri Ramesh Punjaji on 5.3.94 by forging his signature and by putting his signature on reverse of withdrawal slip and obtained the cash. 5th charge against him that he withdrew Rs.8000/- on 29.4.94 from account of Shri Ramesh Punjaji for forging his signature and putting his signature on withdrawal slip and obtained the payment. 6th charge against him that he withdrew Rs.10,000/- from account of Shri Baburao Punja Garur on 30.1.93 by preparing the withdrawal slip forging the signature of Shri Garur and putting the signature on reverse of withdrawal slips and received the cash. 7th charge against him that he withdrew the amount of Rs.20,000/- from account of Shri Baburao Punja Garur on 17.8.94 and made the false entry on that amount in the ledger sheet. Subsequently he cancelled the said entry and the amount was overdrawn. 8th charge against him that he withdrew the amount of Rs.8000/- from the account of Shri B.P. Garur on 3.8.93 by forging his signature and obtained cash payment. 9th charge against him that he prepared the withdrawal slip of Rs.3200/- and received excess cash of Rs.3000/- after posting the altered withdrawal

in the account ledger sheet. 10th charge against him that he withdrew Rs.5000/- from account of Shri Garur on 15.4.94 by forging his signature. He prepared and posted the withdrawal slip in the ledger sheet and obtained payment from the cashier. 11th charge against him is that he prepared and posted withdrawal of Rs.4000/- of Shri Garur on 27.6.94. He had forged the signature of Shri Garur and obtained the cash payment from cashier. 12th charge against him that he prepared and posted withdrawal of Rs.1000/- on 3.8.93 of Shri Garur. He had forged the signature of Shri Garur and obtained cash payment from cashier. 13th charge against him that he withdrew Rs.20,000/- on 1.6.94 from the account of Shri Shivnath W. Raut and he forged the signature of said account holder, put the signature on reverse of withdrawal slip and obtained cash. 14th charge against him that he withdrew Rs.20,000/- on 20.4.93 from the account of Smt. Thakubai Narayan Shinde by forging her left hand thumb impression, put her left hand thumb impression on the reverse of the withdrawal slip and wrote the words "known to me" and obtained the cash. 15th & 16th charge against him is that he withdrew Rs.20,000/- on 9.1.93 and Rs.4000/- on 5.3.93 from the account of Mr. Wagu Dhula Jagtap by forging his signature on the face and reverse of the withdrawal slip and obtained the cash payment. 17th and 18th charge against him was that he withdrew Rs.10,000/- on 14.5.93 and Rs.6000/- on 12.6.93 from the account of Smt. Rampyari Devi by forging by putting thumb impression on the front and reverse of the withdrawal slip and wrote words "known to me" and obtained the payment. 19th and 20th charge against him was that he withdrew Rs.10,000/- on 9.3.93 from the account of Shri Harinarayan Shinde for forging his signature on the face and reverse of the withdrawal slip and then he made the credit of Rs.500/- in his SB A/c. on 1.12.93 by making entry in the ledger sheet of the account to facilitate the withdrawal of Rs.6000/- by the account holder as the balance of the account was only Rs.5707.04. 21st charge against him was that he withdrew Rs.17000/- on 12.12.92 from the account of Smt. Bausabai Shinde. He put her thumb impression on the front and reverse of the withdrawal form and prepared the withdrawal slip in his own hand writing and posted the same in the ledger sheet and on 9.3.93 he made bogus credit entry of Rs.17,000/- in the account and resultantly Smt. Shinde's account was overdrawn by Rs.15315/- and deposited a sum of Rs.1700/- in cash in the account on that date. 22nd charge against him was that he withdrew Rs.15,000/- from account of Shakuntala Bhalerao on 26.3.93 and then prepared and posted the voucher, forged left hand thumb impression of account holder and received the amount from the cashier. 23rd charge against him was that he withdrew Rs.8000/- on 22.9.93 from account of Shakuntala Bhalerao by forging her left hand thumb impression. 24th charge against him was that he withdrew Rs.29,000/- from account of Smt. S.R. Bhalerao on 12.3.94. 25th charge against him was that he withdrew Rs.7720/- on 10.9.93 by preparing withdrawal slip of same amount although Smt. Bhalerao wanted to withdraw only Rs.720/- and received the excess payment of Rs.7000/- after posting the said withdrawal in the account ledger sheet. 26th charge against him was that he prepared the withdrawal slip of Rs.8720/- and received excess of Rs.8000/- after posting the said withdrawal in the account holder of Smt. S.R. Bhalerao though she wanted to withdraw Rs.720/- only. 27th charge against him was that he withdrew Rs.20,000/- on 28.8.92 from the account of Smt. Gunatai Shinde by forging her signature and he prepared and posted the withdrawal slip and obtained payment from the cashier.

32. Charge No.2 against him was that he issued 9 cheques aggregated to Rs.90,000/- in his account with Igarpuri branch in favour of his nephew Deepak Pawar who has opened account with NMC Bank Ltd., Igatpuri. These cheques were presented for payment on the counter of Igatpuri branch by NMC Bank Ltd. He accepted the cheques and initialed the counter foils. He did not enter the credit slips in the subsidiary day book but destroyed all the credit slips and accompanying cheques issued by him. He made relevant bogus entries in the relevant pass books and subsequently withdrew the funds from his nephew's account who was given the relative credit to his nephew on the basis of credit entries in their pass book.

33. Charge No. 3 against him was that NMC Bank Ltd. Igatpuri branch presented the credit slip on 15.9.94 and cheque of Rs.696/- issued by him in favour of LIC India on the counter of Igatpuri Branch. He accepted the slip and the cheque after initialing the counter foil but did not enter the credit slip in the subsidiary day book.

34. On going through enquiry report it appears that sufficient opportunity was given to the concerned workman to defend himself. He was defended by his defence counsel Shri Gokhale and after considering the evidence and documents, the Inquiry officer gave his findings on the basis of documents and evidences on record. On going through the findings of the Inquiry officer it clearly appears that the concerned workman was handling the savings bank account desk, posting of vouchers, updating of pass book, helping customers and other related work was within his duties. He had full control over his desk and he has taken the disadvantage of this situation to his benefits. Mere particularly it appears that statement of concerned workman EX. PE8 was being taken into consideration wherein the concerned workman has admitted that he has prepared withdrawal and forged the signatures of the account holders. Coupled with that statement of the staff members PWs-15, 12, 6, 14, 7, 13, 9, 10, 3 have been considered who according to Inquiry officer have confirmed in their depositions that the concerned workman has given his statement in his own hand writing and on his own. It clearly appears therefore that the findings of the Inquiry officer are based on evidence.

35. In this respect, Learned Counsel for the bank seeks to rely on the decision in case of Tata Info Media Ltd. V/s. Tata Press Employees Union and Anor. 2005 (3) MLJ 105 wherein it is held that

“charge in disciplinary enquiry has to be established on preponderance of probability and not by proving beyond the reasonable doubt that would govern a criminal trial. In each case where the finding that has been arrived at in a disciplinary proceedings is sought to be questioned, the essential question is to be asked is whether the finding of misconduct is based on some evidence or no evidence at all. Once the finding in the disciplinary enquiry is based on some evidence, the sufficiency of evidence in proof of the finding lies beyond the scope of reviewing court.”

In para 17 of the judgment it has been observed that

“this is a case where the finding of misconduct that was arrived at in the disciplinary proceedings was sustainable with reference to evidence on record. The labour court has transgressed the limits on its own jurisdiction in interfering with the findings of the disciplinary enquiry which were based on evidence. The labour court has ignored the material evidence in appreciating the evidence on record. The labour court has applied standard which is not a consistent with the standard of proof of preponderance of probabilities that must govern a disciplinary proceedings. In relying upon minor inconsistency the labour court has lost sight of the fundamental nature of its jurisdiction which were to determine as to whether there was material on record to sustain the charge of misconduct.”

36. Even then Learned Counsel for the union Shri Anchan submitted that the concerned workman has been acquitted in the criminal court in respect of similar charges and on the basis of same witnesses who were examined in departmental enquiry and therefore the Inquiry officer cannot give different findings. He submits that judgment of the criminal court was not challenged by the bank in the High Court hence the judgment of the criminal court holds the field. He seeks to rely on the decision in case of GM Tank V/S. State of Gujarat and Anr. In Civil appeal No. 5282 of 2006 arriving out of SLP Civil No. 8910 of 2004 (S.C.) to submit that when the charges in the criminal and disciplinary proceedings are identical and the criminal proceedings have resulted in the acquittal of the appellant the same ought to have been considered in pending proceedings against dismissal.

37. In the instant case, as a matter of fact, the concerned workman has filed regular civil suit No. 59 / 98 in the court of CJJD Igatpuri and also filed petition for temporary injunction for stay on departmental enquiry against the bank. The application was rejected. He has challenged the said order in Misc. civil appeal No. 250 of 1998 before the Second Addl. Dist. Judge, Nashik. It was his contention that when criminal case is instituted against him, no departmental enquiry should be held as it would be against the directions given in the Shastri award. Appeal also came to be dismissed and then the departmental enquiry was continued. Ultimately in departmental enquiry he was found guilty of misconduct.

38. The charge against him in the criminal trial was that he has committed mis-appropriation of the amount and withdrew amount from the bank by making forged signatures / thumb impression of the depositors and by falsification of account. As per the judgment of criminal court he came to be acquitted of the said charge. Therefore the question creeps in whether the acquittal in the criminal trial would automatically exonerate the delinquent or not ?

39. It is well settled position of law that a criminal trial and the departmental enquiry stand on different footings. In the criminal trial accused has a trial for offence under the Indian Penal Code and other statutes whereas in the departmental enquiry the charges against the delinquent relate to breach of service rules. Standard of proof is different for a criminal trial and departmental enquiry in as much as while proof beyond shadow of doubt is required in the former, preponderance of probabilities is sufficient in the case of later. Acquittal in criminal case is not determinative of the commission of misconduct or otherwise.

40. In the context, Learned Counsel for the bank has relied on the decision in case of Chairman and Managing Director, United Commercial Bank V/S. P.C. Kakar 2003 (4) (SCC 364). In para 15 of the judgment it has been observed that

“Acquittal in criminal case is not determinative of the commission of misconduct or otherwise and it is open to the authorities to proceed with the disciplinary proceedings notwithstanding acquittal in criminal case. It would per-se not entitle the employee to claim immunity from the proceedings.”

41. The reliance is also placed on the decision of South Bengal State Transport Corp. V/S. Swapan Kumar Mitra 2006 (2) SCC 584. In para 10 of the judgment it has been observed that

“Senior Superintendent of Post Offices, Pathanamthitta & Ors. V/S. A. Gopalan, 1997 (II) SCC 239 the view expressed in Nelson Motis V/S. Union of India was fully endorsed and it was held that the nature and scope of proof in criminal case is very different from that of a departmental proceedings and the order of acquittal in former cannot conclude the departmental proceedings. That being the position the order of removal from service emanating from the departmental proceedings can very well be passed even after the acquittal delinquent employee in a criminal case.”

42. In the decision in case of Avinash Sadashiv Bhosale through LRs V/s. Union of India & Ors. 2012 (13) SCC 142, it is observed that

“having registered FIR the bank had no or little role to play apart from rendering assistance to the prosecuting agency. In our opinion failure of the prosecution in producing the necessary evidence before the trial court cannot have any adverse impact on the evidentiary value of the material produced by the bank before Inquiry officer in the departmental enquiry.”

In para 38 of the judgment it has been observed that

“It is a settled position of law that the findings of the Inquiry officer cannot be nullified so long as there is some relevant evidence in support of the conclusion recorded by the Inquiry Officer. The findings recorded by the Inquiry officer cannot be said to be based on no evidence. In such circumstance appellant cannot take advantage of the findings of the innocence recorded by the criminal court. The clean chit given by the Learned Magistrate was influenced by the failure of prosecution to lead necessary evidence. No advantage of the same can be taken by the appellant in departmental enquiry.”

43. Even from the facts the decision in case of GM Tank Vs. State of Gujarat & Anr. Relied by the learned advocate of the union is distinguishable. In GM Tank case the appellant who had been acquitted by the criminal court had been prosecuted for having committed the offence under section 5(1) (e) read with section 2 of Prevention of Corruption Act, 1947. Upon examination of facts and evidence, it was observed that there is not a iota of evidence against the appellant to hold that he is guilty of having committed the offence under the Prevention of Corruption Act, 1947. It was observed that the departmental proceedings in the criminal case are based on identical and verbatim similar set of facts and evidence. It is further observed that infact Respondents did not produce any evidence in support of and / or about the alleged charges involved against the appellant. Criminal proceedings were initiated against the appellant for the offences under Prevention of Corruption Act, 1947 & on the same set of facts and evidence which was the basis of the departmental proceedings.

44. In the instant case the criminal trial was with regard to commission of the offences under section 409, 420, 465, 468, 471 477 (A) of IPC alleging that he committed mis-appropriation of amount and withdrew the amount from the bank by making forged signatures and thump impression of the depositors and by falsification of the accounts. In the departmental proceedings he has been punished on the finding that he is guilty of gross misconduct under the service conditions.

45. In view of that reliance is placed on the decision in case of Avinash Sadashiv Bhosale through LRs V/s. Union of India & Ors. 2012 (13) SCC 142 wherein the decision in case of GM Tank case is distinguished and it has been observed that since the findings of the Inquiry officer were based on relevant evidence the appellant cannot take advantage of the acquittal recorded by the trial court. Findings of the Inquiry officer that the appellant was guilty of misconduct and consequent dismissal order passed is confirmed.

46. In the instant case also I find that the findings of the Inquiry officer are based on evidence and therefore acquittal in criminal case does not give any immunity to the concerned workman.

47. Realising this difficulty the Learned Counsel for the concerned workman submitted that two enquiries were held for the same offence and therefore on that ground also the enquiry is vitiated. He pointed out that the Shri ND Tamhankar earlier conducted the enquiry and then enquiry conducted by N.D. Tamhankar was set a side by the disciplinary authority which is not permissible.

48. This submission is also not acceptable. Shri N.D. Tamhankar was appointed as Inquiry officer to enquire into the charges framed against the workman. The said enquiry came to be conducted ex-parte on account of absence of the workman and his defence counsel on the dates fixed for holding the enquiry. The defence counsel of the concerned workman strongly opposed and protested against the holding of said enquiry vide letter dated 11.1.99 addressed to disciplinary authority. In the said letter the defence counsel had stated to the effect that ex-parte enquiry held against the concerned workman amounted to denial of reasonable opportunity of defence to the workman and the same was violative of principles of natural justice. Disciplinary authority accepted the request of the concerned workman and his defence representative and ordered fresh enquiry by setting aside earlier ex-parte enquiry vide his letter No. DGM/DISC/62 dated 12.5.1999. Inquiry Officer and Presenting Officer were appointed by the disciplinary authority to conduct fresh enquiry. In view of that ex-parte enquiry conducted by Shri Tamhankar became non-est in the eyes of law. Obviously earlier enquiry was conducted ex-parte and it was set aside on the request of the concerned workman and his defence representative. So now the concerned workman and the union is estopped from questioning the validity of fresh enquiry ordered by the disciplinary authority. When there is no bar in bipartite settlement for ordering de-novo enquiry in the appropriate circumstances then the fresh enquiry conducted against the concerned workman is not vitiated on that count.

49. Considering all these facts, I find that workman was given sufficient opportunity to defend his case. He was permitted to be defended by Shri B.R. Gokhale, Defence Counsel appointed by him. Charges framed against him in the charge sheet dated 20.6.96 issued to the workman were read out to him by the Presenting Officer at the instance of Inquiry Officer. The Inquiry Officer had asked to the workman as to whether the said charges were acceptable to him. To which he replied in negative. Set of documents filed by Presenting officer as also the list of witnesses produced by the Presenting Officer was given to the defence counsel. The witnesses produced by the Presenting officer were examined in presence of workman and the defence counsel was given a fair opportunity to cross examine them. Perused by the enquiry report would show that the findings of the Inquiry officer are based on evidences. In view of that I find that the enquiry held against the workman is fair and proper and even the findings of the Inquiry officer are not perverse. This issue is therefore answered accordingly in the affirmative.

50. In view of my findings to Issue No.1, I proceed to pass the following order.

ORDER

1. Enquiry is held fair and proper.
2. Findings of the Inquiry Officer are not perverse.
3. Parties are directed to argue / lead evidence on the point of quantum of punishment.

Date: 21/04/2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 22 जून, 2017

का.आ. 1554.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 21/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/343/2000-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 22nd June, 2017

S.O. 1554.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 22.06.2017.

[No. L-12012/343/2000-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/21/2001

Shri Anil Kumar Namdev,
S/o Shri Bal Sai Namdev,
Behind Govt. Hospital,
Civil Line, PO Manendragarh,
Distt. Korea (MP)

...Workman

Versus

Assistant General Manager,
State Bank of India, Regional Office,
Mithabara, PO/Distt. Shahdol (MP)

...Management

AWARD

Passed on this 7th day of April 2017

1. As per letter dated 5-1-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/343/2000/IR(B-I). The dispute under reference relates to:

"Whether the action of the Assistant General Manager, State Bank of India, Regional Office, Shahdol (MP) in retrenchment of the service in respect of Shri Anil Kumar Namdev, Ex-Messenger with effect from 12-12-98 and not considering him for further employment is justified? If not what relief is the workman entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 6/1 to 6/3. Case of Ist party workman is that he started working in Bank since 1979 on daily wages in Ambikapur branch on daily wages. He was continuously working in Bank. In 1982, his services were discontinued. In 1985, he was called for interview before selection board. After his interview, he was given appointment in Manendragarh branch of State Bank as messenger/ farrash. Ist party workman further submits he was allowed benefits of leave, increased pay, EL, leave encashment, DA, Bonus. After his services were discontinued in 1982, workman was again appointed. He was not given status of permanent employee. Workman was submitting representations time to time in that regard. He completed 13 years service. The employees rendering less service were appointed as permanent employee. Ist party was discriminated. The PF, pension contributions were recovered from other temporary employees. However no deduction was made from his salary. The employees working for short period of 2-4 months were regularized in service. Overlooking seniority of workman, he was not regularized in service. The Bank illegally terminated his services. Other employees were regularized in service after holding interview. Bank violated bipartite settlement denying regularization to him. In 1985, he was selected by the committee and appointment was given to him. That as per circular NO.2 of 88, age limit provided 18-26 years at initial appointment. When he joined service in the Bank in 1980, his age was less than 26 years. The management found him unsuitable on the ground that his age at initial appointment was more than 26 years is contrary to the facts. Workman was denied status of permanent employee. Workman was allowed in service by Regional Office, Jabalpur. His services were terminated by Branch Manager of Manendragarh. Order of termination is inconsistent and illegal. On such ground, workman submits termination of his service is illegal. He prays for reinstatement with backwages.

3. 2nd party filed Written Statement at Page 8/1 to 8/4 opposing claim of Ist party. 2nd party submits that workman Anil Kumar was initially engaged in State Bank of Indore Ambikapur on daily wages in 1980, 81,82. He worked for 74 days, 183 days, 230 days respectively. However workman was engaged in SBI Manendragarh branch on month to month basis for temporary post of messenger cum farrash. That workman submitted application dated 23-7-94 for permanent appointment on the post of messenger cum farrash but he was found unsuitable on the ground being overage at the time of initial appointment. Management discontinued services of workman on 12-12-98. Before termination of his services, Section 25-F of ID Act was complied. Salary of Rs.4829, retrenchment compensation Rs.31388/- was offered. Workman had refused to accept cheque of payment in lieu of notice and retrenchment compensation which was sent by registered post.

4. 2nd party further reiterates that during 80, 81, 82, workman worked for 74, 183, 223 days respectively. Workman had submitted application. However he was found overage at the time of his initial appointment in October 1980. Therefore the claim of workman working in 1979 has been denied. That on 28-12-85, Ist party workman was given appointment on month to month basis on temporary post of messenger. He was not appointed against permanent vacancy. Workman is not entitled for regularization. Workman was not appointed on permanent post. Therefore there was no question of deducting PF etc from his salary. There was no question of regularizing working to maintain his seniority. It is reiterated that workman was not appointed on permanent post of messenger after 23-7-94 as he was found overage at the time of initial entry in service. Workman was not called for interview. Other candidates found eligible were called for interview. 2nd party denies that Ist party workman was within the prescribed age limit of 18 to 26 years. Workman not produced documentary evidence in that regard. 2nd party reiterates that provisions of Section 25-F of ID Act were complied. Management prays for rejection of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the Assistant General Manager, State Bank of India, Regional Office, Shahdol (MP) in retrenchment of the service in respect of Shri Anil Kumar Namdev, Ex-Messenger with effect from 12-12-98 and not considering him for further employment is justified?	Termination of Ist party workman is discriminatory and illegal.
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. The term of reference pertains to legality of retrenchment of service of Ist party and his non-consideration for further employment. Ist party workman filed affidavit of his evidence dated 27-10-10. Workman has stated in affidavit that he was initially engaged in 1979. He was paid Rs.35/- weekly, in 1979 he was not given formal appointment letter. Bank was maintaining attendance which was changing every year. Ramdev was also working on daily wages. In 1982, his services were discontinued. Thereafter he was called for interview before selection committee and he was given appointment on post of messenger cum farrash in 1985 at Manendragarh branch. That he was continuously working from 1985 to December 1998. He was given benefits of leave, leave encashment etc. that he rendered service for 20 years. Workman filed additional affidavit of his evidence narrating above facts in his affidavit of evidence. That after 2-3 years of his service as messenger in 1979, daily wage employees Mohan Soni, Johan Ram Lakda were engaged in Manendragarh, Bhalumada branch. Shyamsundar Patwar working in Bijuri branch were regularized. Employees junior to him were regularized. He was illegally denied regularization by the management. In his cross-examination, workman says that he has filed two affidavits of his evidence. Junior employees are regularized by the Bank. He was given retrenchment compensation, one months pay in lieu of notice. Junior employees are not impleaded as party. In cross-examination, it was not challenged that he was not working as messenger since 1979. Re-examination of workman was allowed. From his evidence, documents W-7,8 are admitted in evidence. In his cross-examination, workman says that Mr. Sharma was the Manager, he doesnot know his name under whom he had worked. Mr. Sharma was Branch Manager for 3 years around 94-95. He denies that certificate Exhibit W-8 was issued to him because of his acquaintance. As stated above, evidence of workman on affidavit that he was working in the Bank since 1979 has not been challenged.

7. The evidence of management's witness Shri R.K.Nanda on affidavit is on the point that workman was employed on purely daily wage basis at Ambikapur from 1980 to 1982. He was engaged for 480 days. Workman was further engaged at Manendragarh branch from 28-12-85 to 12-12-88. That workman was given one months salary Rs.4829/- and retrenchment compensation Rs.31,388/-. That notice in form P was sent to ALC, Shahdol and RLC, Jabalpur. The services of Ist party are retrenched complying with the provisions. Affidavit of management witness is further devoted on the point that workman submitted application dated 23-7-94 for permanent appointment to the post of messenger. Said application was examined and found workman was overage at the time of initial entry. Workman was not called for interview. Management's witness in his cross was unable to say in which month of 1980, workman joined duty in the Bank. The relevant record may be available in the Bank he filed affidavit on the basis of available record. Management's witness was unable to tell service period of workman while calculating retrenchment compensation. He was unable to tell whether chart about compensation submitted in the court he did not remember details of calculation of retrenchment compensation. In his frutehr cross, management's witness says there was bipartite settlement between Bank and Union for absorption of casual employees. He denies that further was not called for interview. Workman submitted application but it was rejected. He did not remember whether at that time there were vacant post. Application of workman was rejected on the ground that he being overage at the time of initial appointment in 1980. The date of entry in service of workman was about 26 years. He has denied that workman not completed 26 years age from the time of his initial appointment. Management witness denies that date of birth is 27-7-54. He claims ignorance whether workman had submitted certificate of date of birth along with his application in 1994. In cross examination of management's witness, copy of notice in Form F was sent to ALC, Shahdol, RLC is not challenged.

8. Workman has produced documents Exhibit W-1 letter of appointment dated 26-12-85. Workman was directed to report to Branch Manager, Manendragarh. Exhibit W-2 is letter of introduction issued by Branch Manager dated 11-8-86. Said letter shows that workman was working since 28-10-85. Exhibit W-3 is copy of rules regarding recruitment of subordinate staff. Initially age limit was 18/24 years was enhanced to 26 years. Exhibit W-4 shows working days of workman from Jan to September 82. In Written Statement filed by management, no point is raised that workman not completed 240 days continuous service. Exhibit W-5 is notice dated 12-12-98. Workman as offered one month's Rs.4829/-, retrenchment compensation Rs.31,388/-. Said document is produced by workman himself and admitted by management. The evidence of workman that he had no intimation about said notice cannot be believed. Document Exhibit W-6 is letter dated 17-1-90. Workman has claimed that he was working in the Bank from 1979. He was not given any appointment letter.

9. Management produced documents Form P marked Exhibit M-1 information of retrenchment of Ist party was sent to ALC, Shahdol, RLC, Jabalpur. During course of argument, learned counsel for workman insisted that management has not prepared seniority list. Section 25-F was not complied as acknowledgement of Form P is not produced. When Form P is produced at Exhibit M-1, it is difficult to believe that it was not sent to the Competent Authority name shown in the document. Evidence on record shows that services of Ist party workman were terminated complying provisions of Section 25-F-a,b,c.

10. Workman has produced Exhibit W-7 date of birth of workman is shown 21-7-54, W-8 is certificate produced by workman regarding his working in the Bank since June 93 giving details of his pay. Management's witness in his cross

admits there were bipartite settlements regarding absorption of subordinate staff. The evidence of management is consistent on point workman had submitted application for his absorption in service on post of messenger on 23-7-94. Said application was examined and Ist party was found overage. Management's witness has not produced any document. In his cross examination, management witness says documents may be in the Bank. The documents that workman was found overage was not produced in Court. As per exhibit W-7, date of birth of workman is 21-7-54. Workman would complete 26 years on 20-7-80. Management's witness in his cross examination was unable to tell the date of initial appointment of Ist party workman. In para-2 of his affidavit of management witness, it is stated that workman was working in Ambikapur branch during 1980 to 1982 without clearly mentioning the date of his initial appointment. Evidence of workman that he was working in the Bank from 1979 has not been challenged. Even if evidence of management's witness is believed that workman was working in the Bank from 1980, the age of workman was less than 26 years. Evidence of management's witness is silent that workman was initially engaged in October 1980. When two views are possible from evidence on record, the view favourable to the workman deserves to be adopted. The application of workman for absorption was rejected on ground of overage. He was denied opportunity. Other employees having less service were permanently absorbed in service. Policy of last come first go was not followed. Said act of the management appears discriminatory. Junior persons retained in service and workman has been terminated is in violation of Section 25(G) of ID Act.

11. Counsel for management relies on ratio held in

Rajkumar versus Director of Education and others reported in 2016(2)SCC(L&S) 111. Ratio held in the case that conditions precedent for retrenchment under Section 25-F(c) is mandatory.

In present case, management has produced Exhibit M-1 copy of Form-P as well as notice of retrenchment. Therefore ratio held in the case cannot be applied to case at hand.

Reliance is also placed in case between Ajaypal Singh versus Haryana Warehousing Corporation reported in 2015(6)SCC-321, Gaurishanker versus State of Rajasthan reported in 2016(1)SCC(L&S) 546 cannot be applied to present case. Evidence on record is clear that workman was continuously working from 1985 to December 1998. His application for permanent absorption was rejected on ground being overage. From the evidence discussed above, it is not proved that workman was overage.

Shri Arun Patel relies on ratio held in case between Sudarshan Rajpoot versus UP State Road Transport Corporation reported in 2015(2)SCC-317. Their Lordship held services of workman. Workman continuously worked more than 3 years had rendered more than 240 days service on contractual basis is statutorily prohibited and impermissible.

In present case, workman was continuously working from 1985, he is not absorbed in service, rejection of application on ground of being over age is not supported by evidence. Continuance of workman as temporary employee amounts to unfair labour practice.

I am also referred to ratio relied by Advocate Tripathi for management in case between Bhavnagar Municipal Corporation versus Jadeja Govubha Chhanubha and another reported in 2014(16)SCC-130. Ratio held in case deals with burden to prove continuous service for 240 days lies on workman. That on failure of employee to produce best available evidence, no adverse influence can be drawn.

In present case, parties are not in dispute about workman referring more than 240 days continuous service. Ratio held in the case cannot be applied.

12. In case between State Bank of Bikaner & Jaipur versus Om Prakash Sharma reported in 2006(5)SCC-123. Ratio pertains to violation of Section 25-H and not compliance of Rule 77. In compliance of Rule 77 may attract penalty under Rule 79. Ratio held cannot be beneficially applied to present case.

Ist party was terminated issuing notice offering notice pay of one month and retrenchment compensation. However evidence discussed on record is clear that workman was denied opportunity for permanent absorption on the ground being overage. Said above contention of management is not supported by evidence discussed above. The denial of permanent absorption to the workman on said ground is illegal, workman has been terminated. The denial of absorption of the workman is illegal. Junior employees were continued in service, termination of workman is in violation of Section 25(G) of ID Act. Accordingly Point No.1 is answered.

13. Point No.2- The age of workman is shown 57 years in his affidavit of evidence filed in the year 2012. Workman has already attained age of superannuation. Considering workman illegally denied permanent absorption in service and juniors were regularized. Said action of the management is illegal as workman has already attained age of superannuation, reinstatement of workman is not possible. In my considered view, compensation Rs.2 Lakh would be appropriate in the facts and circumstances of the case. Accordingly I record my finding in Point No.2.

14. In the result, award is passed as under:-

- (1) Though termination of workman is not legal, non-consideration of workman for workman is illegal.
- (2) 2nd party is directed to pay compensation Rs. 2 Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 22 जून, 2017

का.आ. 1555.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधनतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 77/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.06.2017 को प्राप्त हुआ था।

[सं. एल-12011/49/2008-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 22nd June, 2017

S.O. 1555.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 22.06.2017.

[No. L-12011/49/2008-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR NO. CGIT/LC/R/77/2009

Shri S.A. Henry,
Regional Secretary,
State Bank of India Staff Congress (INTUC),
34, Prem Nagar, Madan Mahal,
Jabalpur

...Workman

Versus

Deputy General Manager,
State Bank of India,
Zonal Office, Vijay Nagar,
Jabalpur

...Management

AWARD

Passed on this 3rd day of April 2017

1. As per letter dated 17-9-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/49/2008-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Assistant General Manager, Region-I, State Bank of India Zonal Office, Jabalpur in suspending Shri S.A.Henry, Special Assistant, SBI, Jawaharganj Branch during the pendency of conciliation proceeding is legal and justified? If not, what relief is the workman concerned entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of Ist party workman is that conciliation proceeding No. J-3(15)/2007-ALC was pending before ALC, Jabalpur between him and management of the Bank. Said conciliation proceeding pertaining to the matter of charge of cash department. The failure of conciliation report was sent to the Government of India on 15-10-07. The same was received in Shram Mantralaya on 22-10-2010. During pendency of conciliation proceeding, Mr. Ajit Jain Assistant General

Manager of SBI issued order of his suspension on 8-10-07. Ist party workman refers to Section 33 of ID Act. That during pendency of conciliation proceeding employer cannot change service conditions etc . That the management did not follow conditions provided under Section 33 of ID Act and his service status is changed by issuing order of his suspension during pendency of conciliation. That workman requested ALC Jabalpur to intervene in the matter and revoke order of his suspension. ALC had registered case No. J-3(16)2008. That failure report was sent to the Secretary, Government of India on 20-8-08. Consequently dispute has been referred by the Central Government. In above factual matrix, workman prays for taking back the order of his suspension.

3. 2nd party management filed Written Statement opposing claim of workman. It is submitted that Ist party raised present dispute alleging violation of Section 33 of ID Act. That Government has referred dispute bearing R/3(5)2007. That workman was posted as Special Assistant in Jawaharganj branch Jabalpur since 2001. Management found he did not work at all. Several financial irregularities were found committed by him. He did not maintain account of postal expenses incurred by him nor he got it checked by the management at branch. When workman was directed to take compliance of register vide office order dated 4-7-07, workman did not comply with said direction. Workman also did not show dispatch register to circle auditor. He did not maintain accounts of postal accounts and thereby committed serious misconduct. It was also found Ist party did not cover necessary information in dispatch register, same was got done by some outsiders without permission of the competent authority. Said act of workman jeopardise interest of the Bank. Workman was asked to check the daily accounts. He did not complete work on any day. The workman was asked by Branch Manager to complete said work, he did not carry out. Act of workman was subversive of discipline amounting to misconduct. On such background, workman was suspended on 8-10-07.

4. That workman was served with notice dated 3-12-07 calling his explanation. He was asked to submit his reply within 7 days. In case of its failure, departmental enquiry was to be initiated. Ist party did not submit reply to the notice even after reminder dated 2-2-08. Chargesheet was issued to him on 8-4-08. Enquiry was conducted against workman and charges against him found proved. Workman was dismissed as per order dated 27-8-09. Present dispute is referred infructuous. Ist party workman challenged order of his suspension filing writ petition in Hon'ble High Court. Hon'ble High Court declined to interfere in the matter granting liberty to Ist party to file. It is further submitted that present dispute pertains to violation of Section 33 of ID Act. Remedy is provided under Section 33-A of the act and not under Section 10 of the act.

5. Ist party has not disclosed the nature of earlier dispute raised by him. During pendency, the suspension order was issued. Therefore Ist party is not entitled to any relief. Ist party raised dispute before ALC Case No. J-3(15)2007 pertaining to management cannot force to take charge of cash department etc. in view of circular No. 18/99. Management submits that the suspension of workman was on account of serious irregularities committed by him while working as Special Assistant at Jawaharganj branch, Jabalpur. Enquiry was conducted against him and workman has been dismissed. Section 33 of ID Act is not applicable in the matter. As per Section 33, the dispute should be pending before conciliation officer or board. The alteration should have the effect of making the change in the conditions of service applicable to the workman. Said clause is not applicable in case. On such ground, 2nd party prays to answer reference in its favour.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Assistant General Manager, Region-I, State Bank of India Zonal Office, Jabalpur in suspending Shri S.A.Henry, Special Assistant, SBI, Jawaharganj Branch during the pendency of conciliation proceeding is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. Point No.1- The terms of reference pertains to legality of the order of suspension of Ist party workman issued during pendency of conciliation proceeding J-3(15)2007. As per para-3 of the statement of claim, failure report was sent by ALC to Government on 15-10-07. As per para 4 , the order of suspension was issued on 8-10-07 i.e. prior to the failure report was sent by conciliation officer to Government on 15-10-07. The conciliation proceeding was pending before ALC. Ist party workman filed affidavit of his evidence supporting contentions in statement of claim. In his cross, workman says he did not remember which kind of conciliation proceeding was pending when order of his

suspension was issued. He admitted his signature on Exhibit M-1 application submitted to ALC, M-2 reply submitted by management, M-3 copy of failure report. Exhibit M-4 order of his suspension. After order of suspension, Exhibit M-5 charge sheet was issued to him. He filed Writ petition in Hon'ble High Court produced at Exhibit M-6 and reply filed M-7.

8. Management filed affidavit of witness Pranay Singh supporting contentions in Written Statement filed by the management. However management's witness remained absent for his cross-examination. His evidence could not be considered.

Section 33(1) provides- During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before² an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

- (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
- (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

For violation of Section 33, remedy is provided under Section 33-A. said section provides-

Where an employer contravenes the provisions of section 33 during the pendency of proceedings⁶ before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal], any employee aggrieved by such contravention may, make a complaint in writing, in the prescribed manner-

- (a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in indicating in, and promoting the settlement of, such industrial dispute; and
- (b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act.

Evidence on record is clear when order of suspension of workman is issued in dispute was not pending before this Tribunal as contemplated under Section 33(A)(a,b) rather the conciliation proceeding was pending before ALC, Jabalpur. Even Ist party had submitted applications regarding his grievance praying for revocation of order of suspension. Though proceeding was registered, order of suspension was not revoked. Ist party workman has been dismissed from service after issuing chargesheet and holding enquiry. The question of suspension can very well be decided in said reference. In view of Section 33(A)(b) as any dispute was not pending before this Tribunal when order of suspension of workman was issued, I record my finding in Point No.1 in Affirmative.

9. Point No.2- the fact needs to be noted that workman is dismissed from service after holding enquiry. Workman was suspended during pendency of enquiry, the question of legality of suspension could be decided in said reference. In present reference, workman cannot be allowed relief in that regard. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management in suspending Shri S.A. Henry, Special Assistant, SBI, Jawaharganj Branch during the pendency of conciliation proceeding is not found illegal in the present reference.
- (2) Workman is not entitled to any relief. However the legality of suspension of workman is kept open for deciding in reference proceeding pertaining to the dismissal of his service.

R. B. PATLE, Presiding Officer

नई दिल्ली, 22 जून, 2017

का.आ. 1556.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 12/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.06.2017 को प्राप्त हुआ था।

[सं. एल-41012/182/2005-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 22nd June, 2017

S.O. 1556.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of West Central Railway and their workmen, received by the Central Government on 22.06.2017.

[No. L-41012/182/2005-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/12/2007

Shri Bhujwal,
S/o Shri Hariram Ahirwar,
R/o Gram Post Khurai Tehsil Khurai,
Distt. Sagar (MP)

...Workman

Versus

Divisional Railway Manager,
West Central Railway,
Jabalpur.

Divisional Railway Manager,
Central Railway,
Bhopal

...Management

AWARD

Passed on this 17th day of April, 2017

1. As per letter dated 9th January 2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/182/2005-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Divisional Railway Manager, West Central Railway, Jabalpur (MP) in terminating the services of Shri Bhujbal w.e.f. 15-6-89 is justified or not? If not, what relief he is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/3. Case of Ist party workman is that he was working as casual labour on post of waterman during period 9-6-87 to 1-5-88 and 21-8-89 to 14-6-89 in broken period at C. Railway Bina for total 149 days. His services were arbitrarily terminated without assigning any reasons or show cause. That his termination is wrongful. Workman had submitted representations. He was given assurance that when there will be vacancies available, he would be called. In the year 2002, 2nd party appointed about 308 ex-card holders casual labour. His name was not listed. That he raised dispute before ALC. However Ministry did not refer the dispute only after directions in Writ Petition No. 13261/06 by Hon’ble High Court, the dispute has been referred. Ist party has referred certain documents in para-7 of the statement of claim. Workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of Ist party workman, 2nd party reiterates that the claimant was not employed under DRM, Jabalpur. Order of reference is not proper as the workman was not dismissed by DRM, W.C.Rly, Jabalpur. The claimant workman had filed proceeding before ALC. The dispute was raised after 16 years is not tenable. After considering the matter, Government had considered that workman had completed 240 days continuous service, the dispute was raised belatedly had no merit. 2nd party reiterates that only after direction by Hon’ble High Court, the dispute has been referred. The belated reference is not tenable. As per documents, it seems that workman was engaged as waterman under station master Bina for 22 days during period 9-6-87 to 30-6-87 and 27 days in 1-7-87 to 27-7-87, 13 days in 88 total 63 days. Workman worked for 86 days in 1989, total working days was 149 days in broken period. Workman has not completed 240 days continuous service contemplated under Section 25 B of ID Act is not entitled for protection of Section 25-F of ID Act. The Ist party has not made out pre-conditions for application of Section 25-F of ID Act. Workman for first time claimed employment as ex casual employee. Workman had not worked for 120 days without break. Documents in that regard are not produced by workman. He is not entitled to any relief. 2nd party prays for rejection of claim.

4. Ist party workman filed rejoinder reiterating his contentions in statement of claim.
5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Divisional Railway Manager, West Central Railway, Jabalpur (MP) in terminating the services of Shri Bhujbal w.e.f. 15-6-89 is legal and proper?	Ist party workman was not terminated by DRM, W.C.Rly.
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

6. Point No.1- The term of reference pertains to legality of termination of services of workman. In Paras 2 & 3 of statement of claim, workman has pleaded that he worked for total 49 days in broken period. Term of reference doesnot pertain to denial of appointment of Ist party workman as casual employee.

7. Ist party workman filed affidavit of his evidence, workman has stated that he worked for 149 days during the period 9-7-87 to 14-6-89. His services were orally terminated without assigning any reasons. Workman remained absent for his evidence. His evidence could not be considered.

8. Management's witness Meena filed affidavit of his evidence. In Para-3 of his affidavit, he has given details of the working days of workman total 149 days in broken period. That workman had not completed 120 days continuous service or 240 days continuous service in preceding calendar year. That Railway has recruitment policy for appointment of regular employees . that as a gesture of good will and one time settlement of dispute, it was decided to offer opportunity to all excadre employees being appointed on regular basis. Vide publicity was given in daily newspaper inviting applications from ex-casuals. The advertisement was also displayed on notice board requesting to submit application along with required information. Workman did not submit application for his selection. Workman has raised claim after 17 years. From evidence of management's witness document M-1 is admitted in evidence. Ist party workman failed to cross-examine witness of the management. Evidence discussed above is clear that workman was not terminated by 2nd party management. The claim for employment by Ist party on the basis of ex-casual employee is not included in terms of reference. Evidence of management's witness remained unchallenged that workman had not submitted application when the applications were called from casual employees for appointment on regular basis.

9. Workman has produced documents Exhibit W-1 certificate of working as casual labour for total 63 days, Exhibit W-1(a) for total 149 days working, Exhibit W-3 is application submitted by ALC. Exhibit W-4 is copy of failure report. W-5 is copy of order of reference, W-6 is order on Writ Petition filed by workman. Documentary evidence doesnot show workman had completed 240 days continuous service in 12 months preceding termination from service. For the evidence discussed above., I record my finding in Point No.1 that services of Ist party workman were not terminated by 2nd party.

10. Point No.2- In view of my finding in Point No.1 that workman was not terminated by management, workman is not entitled to any relief.

11. In the result, award is passed as under:-

- (1) The Ist party workman was not terminated by DRM, W.C.Rly.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 22 जून, 2017

का.आ. 1557.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 28/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.06.2017 को प्राप्त हुआ था।

[सं. एल-41011/05/2011-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 22nd June, 2017

S.O. 1557.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South East Central Railway and their workmen, received by the Central Government on 22.06.2017.

[No. L-41011/05/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/28/2012

General Secretary,
SCEWASTAMB Union,
H.No.145/02, Keshar Awas, Smriti Van,
Turning Point Rajkishore Nagar,
Bilaspur

...Workman/Union

Versus

General Manager,
SEC Railway, GM Complex,
Bilaspur (CG)

The Sr.DEE(OP),
SEC Railway,
Opp.DRM Building,
Bilaspur Division, Bilaspur.

Chief Crew Controller,
SEC. Railway,
Bilaspur (CG)

...Managements

AWARD

Passed on this 25th day of April, 2017

1. As per letter dated 20-1-2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41011/05/2011-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Sr.Divisional Electrical Engineer (OP) South East Central Railway, Bilaspur (CG) in (i) non-serving of call book to Shri Ganish Kumar, Loco Pilot(Goods) on turn to Running Staff as per system of running staff working in force and treated unauthorized absent in duty from 3-1-08 to 29-2-08, (ii) Non allowing duty to Shri Ganish Kumar in dispute from the period of 3-1-08 to 26-1-09 and non-payment the wages for the above period and (iii) Awarding major penalty i.e. reverted from Loco Pilot (Goods) to Loco Pilot Shunting in lower grade to Shri Ganish Kumar w.e.f. 20-3-09 during conciliation proceeding is legal and justified? To what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim. Case of workman is that workman Ganish Kumar, S/o S.K.Pradhan was employed as Loco Pilot under Sr.Divisional Electrical Engineer, Bilaspur. That Ist party Union of running staff has submitted that service of call book at booking of running staff online duty to work out train from their headquarters provides rest at running rooms, rest room facility. As per the system of working running staff report for duty in accordance with call book. he has to sign appearance register, call departure sheet. He has to sign arrival sheet. That on 3-1-08, Ganish Kumar was served a late call book for working out Goods Train No. N Box T.O departure at 0.30 AM. He had turned up on duty at 9.30 hours. He signed departure sheet accordingly. However another Driver was utilized for the train in place of workman Ganish Kumar contrary to the staff booking rules in force. That afterwards, service call book to Ganish was stopped. Arbitrarily the workman had protested it. Chargesheet for minor penalty was issued under Rule 11 of Railway Service Rule 1968. The workman was denied employment under coercive circumstances tantamounting to illegal lock out. That workman had issued legal notice through its Advocate on 22-10-08. After receiving legal notice, management converted chargesheet under Rule-11 converting to major penalty under Rule-9. The enquiry was conducted during the period 6-6-08 to 29-7-

08. Workman was not allowed duty during above said period. Workman had submitted his defence brief. He had also attended Enquiry Proceedings. It is alleged that Enquiry Officer submitted his findings contrary to the evidence without considering defence brief. Workman Ganish should have been treated on duty for all purpose. The findings of Enquiry Officer are illegal. That as a matter of rule, he aggrieved the employees who have been issued release memo and ought to have been taken on duty roster outline in train to work in normal way. Workman had submitted final defence statement under Rule 10 as per Railway Boards order dated 10-5-94, matter should have been decided within 20 days. Matter was not decided with open mind. That non-serving of call book according to booking muster amounts to denial of employment to running staff and illegal lock out. Workman raised dispute in conciliation proceeding. Workman prays for payment of full wages and set-aside reversion as ELS from the post of Loco Pilot alleging violation of Section 33 of ID Act.

3. 2nd party filed Written Statement opposing claim of workman at Pages 2 to 7. 2nd party submits that Ganish Kumar was working as Loco Pilot (Goods) in the South East Central Railway, Bilaspur. Chargesheet was issued to him under Rule-9. It was alleged that on 3-1-08, workman while performing duty as loco goods committed serious negligence. The charges were on 3-1-08, workman was served call book for Train No. NBOX, T.O 9.30 hours but he turned up late on duty i.e. at 9.30 hours. Workman disobeyed the orders of his superiors. Workman remained unauthorized absent from duty from 3-1-08 till 29-2-08 without furnishing any sort of valid documents or information to the working spot or railway. 2nd party reiterates that On Duty Crew Controller advised claimant to work on down train due to Crack train already departed. He refused to work down train and signed off register at 10.30 hours without taking permission of Crew Controller. Workman disobeyed orders of his superiors. They remained unauthorized absent during above said period. The reply to chargesheet was considered. Enquiry Officer was appointed. Workman was allowed Defence Assistant Shri R.K.Pandey. it is reiterated that workman was allowed opportunity to submit defence witnesses. Enquiry Officer submitted his report holding charges against workman proved. Disciplinary Authority issued showcause notice dated 3-9-08 along with copy of Enquiry Report. Workman submitted his representation on 17-9-08. Disciplinary Authority vide order dated 18-3-09 reverted workman from post of Loco pilot to Loco Pilot shunting. 2nd party reiterates that workman not preferred appeal in time therefore appeal was dismissed time barred. It is reiterated that management had converted chargesheet for minor penalty to chargesheet under Rule-9 for major misconduct. Workman had reported at 9.30 hours. Train arrived at 9.05 hours and departed at 9.15 hours. It is reiterated that as charges of disobeying orders of superiors not attending duty are proved, reversion of workman is legal. Workman is not entitled to any relief.

4. Ist party workman submitted rejoinder reiterating their contentions in statement of claim.

5. On 13-3-15, Ist party submitted non-disputed fairness of enquiry therefore issues were framed as under:-

(i) Whether charges alleged against workman are proved from evidence in Enquiry Proceedings?	Charge No.1 & 2 are proved, Charge No.3 is not proved.
(ii) Whether the penalty of reverting workman from Loco Pilot (Goods) to Loco Pilot (Shunting) is legal?	In Negative
(ii) If so, to what relief the workman is entitled to?"	As per final order.

REASONS

6. The documents produced by workman Exhibit W-1 defence brief submitted by him before Enquiry Officer. Exhibit W-2 is report of Enquiry Officer standard form admitted by the management. Workman Ganish Kumar filed affidavit of his evidence. Workman in his affidavit says he received call book on 3—08 at 8 AM. He was given call through telephone at his residence. He reported at station for Train No. N Box PO 9.30 hours etc. as the legality of enquiry is not disputed, the question whether charges alleged against workman are proved needs to be decided considering evidence in Enquiry Proceedings as per proviso to Section 11-A of ID Act. No other evidence can be entertained. Exhibit M-1 is charge. Exhibit M-2 is Enquiry Proceedings. Charge against workman Ganish Kumar is that on 3-1-08, he was served call book for Train No. N BOX TO 09.30 hours but he turned up late at 9.30 hours. That he disobeyed orders of superiors, that he remained absent from 3-1-08 to 29-2-08. Management's witness Shri H.S.Kaushik in his evidence says that Ganish Kumar was booked on 3-1-08 for NBOX TO 09.30 hours but he turned up late at 9.30 hours. Train arrived at 9.05 hours and departed at 9.15 hours. That workman was instructed by him to work in down train . the response of workman was he will go only in up direction and he went outside lobby. He reported facts to Shri S.K.Sahu CC(G), DSP, Bilaspur. He noticed that Ganish Kumar had marked sign off in the

register. W.r.t. unauthorized absence, said witness claimed ignorance. Witness MW-2 Dhurve, Umakant Yadav claimed ignorance about disobeying orders by workman. Witness S.K.Neeraj in his evidence says he had taken TO of train 9.30 hours and booked Ganish Kumar and at the time of sign on of staff TFR on duty taken on record. Besides it, he did not know anything. MW-4 Shri S.K.Sahu in his evidence says that he was on general duty from 10.00 hours to 18.00 hours. He claims ignorance about duty of Shri Ganesh Kumar. That when CC on duty has taken decision to utilize LP Ganish Kumar to work in down direction at that time Ganish Kumar was not present on lobby. He further checked the official record, sign off Register and found that party has already signed off and left his working place without permission of his superiors. His evidence is not shattered in cross-examination of above points, workman examined defence witness G.P.Rao, his evidence is devoted on the point that Ganish Kumar was offered a train as per CC on duty his booking was subsequently changed from actual T.O. Party had refused and went away without intimating any Supervisor. He did not call him officially thereafter as he was absent from duty. In reply to Q.7, he says he called party to come along with higher authorities in the matter but party said if DEE gives me call book then only he will appear before him. Evidence on record clearly shows that workman was served call for train at 9.30 hours, he attended duty at 9.30 hours. Train had arrived at 9.05 hours and departed at 9.15 hours. When workman was directed to work on down train, he refused. workman insisted that he would attend duty only when call was given by DEE. The evidence on record shows workman disobeyed order of his superior by refusing train in down direction. Though workman had submitted representation, he was not issued call for duty. When call for duty was not issued to workman, charge of unauthorized absence from 1-1-08 to 29-2-08 cannot be established. For above reasons, I record that Charge No.1,2 are proved, Charge No.3 is not proved.

7. Point No.2- The punishment of revision from Loco Pilot (G) to Loco Pilot Shunter imposed against workman only on the ground that workman had attend call at 9.30 AM, train arrived at 9.05 AM and departed at 9.15 hours. Workman had signed off without permission of the superior , they had disobeyed order of his superior refusing to go down side. Punishment of reversion would not be justified.

8. Learned counsel for 2nd party Shri Vijay Tripathi submits that under Section 11-A of ID Act only punishment of discharge, dismissal would be reviewed by the Tribunal. The Tribunal has no power to interfere with the punishment.

9. Learned counsel for Ist party Shri Pranay Choubey on the point relies on ratio held in case between-

Gujarat State Road Transport versus D.V.Chouhan reported in 2006(2)GLR-889. In para-11, full bench of Gujarat High Court held Adverting to the question which of the two judgments referred to by the Division Bench decides the law correctly our answer is Section 11-A may exclusively deal with cases of discharge or dismissal but criteria after common reference under Section 10 to decide an industrial dispute is same namely the second schedule and the third schedule. In other words, in all cases of punishments, Labour Court/ Tribunal can examine the legality of propriety of punishment, irrespective of nature thereof. Scope of examination of an industrial dispute and extent of interference is same irrespective of the fact that Section 11-A deals specifically with cases of discharge or dismissal because as said in all cases it is the legality and propriety of the order passed by the employer which is to be examined.

Considering ratio held in above case, review of the legality of punishment of reversion imposed against workman Ganish Kumar can be considered by this Tribunal. Considering that workman had disobeyed orders of superiors attending duty at 9.30 hours and refusing to go to down direction, punishment of reversion is not proper. In my considered view, with-holding of one increment of workman Ganish Kumar would be appropriate to meet ends of justice. Accordingly I record my finding in Point No.3.

10. In the result, award is passed as under:-

- (1) The action of the management in non-serving of call book to Shri Ganish Kumar, Loco Pilot(Goods) on turn to Running Staff as per system of running staff working in force and treated unauthorized absent in duty from 3-1-08 to 29-2-08 is illegal.
- (2) The action of the management in not allowing duty to Shri Ganish Kumar in dispute from the period of 3-1-08 to 26-1-09 and non-payment the wages for the above period is illegal.
- (3) The reversion of workman to the post of Loco Pilot shunter is set-aside. The punishment of reversion is modified to stoppage of one increment without cumulative effect. 2nd party is directed to pay wages for the period 3-1-08 to 29-2-08.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 22 जून, 2017

का.आ. 1558.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 110/12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.06.2017 को प्राप्त हुआ था।

[सं. एल-12011/36/12-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 22nd June, 2017

S.O. 1558.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 110/12) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of ICICI Bank and their workmen, received by the Central Government on 22.06.2017.

[No. L-12011/36/12-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/110/12

General Secretary,
Dainik Vetan Bhogi Bank Karmchari Sangathan,
F-1, Tripti Vihar, Opp Engineering College,
Ujjain (MP)

...Workman/Union

Versus

Regional Manager,
ICICI Bank (EBOR),
ICICI Regional Head Office,
22, Y.N.Road, New Palasia,
Indore

...Management

AWARD

Passed on this 18th day of May 2017

1. As per letter dated 16-0-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/36/12-IR(B-I). The dispute under reference relates to:

“Whether the demand of the Union, Dainik Vetan Bhogi Bank Karamchari Sangathan for payment of bonus for the period from 1-3-96 to 15-1-05 to Shri Bhupendra Pawar is legal and justified? To what relief Shri Bhupendra Pawar is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through General Secretary, Daily Wage Bank Employees Union. Case of Ist party workman is that he was orally engaged as permanent peon on daily wages on 1-3-96. He was paid wages Rs.25 per day. Wages were increased to Rs.30, 40, 50 60 per day. Wages were paid to him through regular peon Ghansham Srivastav, Satyanarayan, Radhesham Solanki, Kailash Namdev, Anil Verma, Ashok Thakur, 3 G Photo bills. That he worked more than 240 days during each of the year. His services were terminated without notice on 5-1-05 when he demanded bonus. His services were terminated without notice, retrenchment compensation was not paid to him. That dispute is referred pertains to his demand for bonus. On such ground, workman claims bonus for the period 1-3-96 to 15-1-05.

3. 2nd party filed Written Statement opposing claim of workman. Preliminary objection is raised that workman had never worked. He had not worked for 240 days during any of the year. Ist party workman was not working as peon in the Bank. He was engaged for 1-2 hours as casual labour. He is not regular employee. The workman is not eligible for bonus. The casual employees are not entitled to pay of regular employees neither he is eligible for bonus. That Shri R.Nagwanshi is dismissed employee of the Bank, he is not competent to raise the dispute. In Writ Petition No. 304/04, vide order dated 13-12-04, Shri R.Nagwanshi was prohibited from carrying legal profession under guise of Union. That dispute under Section 2K is existing. Workman was terminated from service. Employer employee relationship doesnot exist. Dispute is not tenable. That Branch Manager has no authority to appoint peon, messenger or security guard. The employees of sub cadre are required to be appointed after publication in newspaper calling names from Employment Exchange. Ist party workman was not received appointment letter following interview or selection process. He had not completed 240 days continuous service during any of the year. He was engaged for cleaning, sweeping work for 30-40 minutes in a day. The contentions of workman that he was continuously working from 1-3-96 to 15-1-05 is false and imaginary. Claim of workman deserves to be dismissed. As Ist party workman was not regularly engaged, he is not entitled to bonus. It is denied that workman was engaged as permanent peon on wages Rs.25 per day on -3-96. Whenever workman was engaged as casual labour, he was paid wages and not as a pay. It is denied that workman had regularly participated in reference proceeding. Claim of workman deserves to be dismissed.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the demand of the Union, Dainik Vetal Bhogi Bank Karamchari Sangathan for payment of bonus for the period from 1-3-96 to 15-1-05 to Shri Bhupendra Pawar is legal and justified?	Partly in Affirmative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. Point No.1 The term of reference pertains to demand of bonus for the period 1-3-96 to 15-1-05 to Shri Bhupendra Pawar. Management had opposed claim of workman filing detailed Written Statement. Workman has not adduced oral evidence. Representative of workman submitted in writing on 18-12-15 that no oral evidence would be given.

6. Management filed affidavit of evidence of Shri Lalit Sharma supporting whole contentions in Written Statement filed by the management. In R/1/09, it is held that workman had not worked continuously for 240 days. Claim of workman for bonus is baseless. Workman was engaged for cleaning, sweeping work for 30-40 minutes for casual nature of work. The dispute raised by Ist party is not covered as dispute. Ist party workman was appointed following recruitment process, his name was not sent through Employment Exchange, no interview was conducted. Management's witness in his cross says he doesnot know claimant. He was not posted in MG Road branch during 96 to 2005. He received information from Rajendra w.r.t. claimant. He had not visited MG Road branch to see the documents. Claimant was engaged for casual work, any kind of selection process was not followed. He claims ignorance about rates of wages paid to claimant. Management's witness was unable to tell during 96 to 2005, in whose name payments were made to the claimant. Management's witness admits that claimant was paid wages through regular peons. He was not served notice of termination, retrenchment compensation was not paid. Evidence of management's witness is clear that workman was engaged as casual labor. His evidence that workman was engaged for 30-40 minutes and wages were paid to him is not shattered in cross examination.

7. Ist party has produced documents Exhibit W-1 information was called from Sr. Manager of MG Road branch about age, qualifictions and payment made to claimant Bhupendra Pawar. Exhibit W-2 admitted by management shows Ist party workman was engaged in 1996. He was paid Rs.30 per day in 1996, Rs.40 per day in 1997, Rs.50 per day in 2002, Rs.50 per day in 2003. Ist party workman was paid Rs.60 per day from 25-1-04. Exhibit W-3 is reply submitted by management before RLC contending that claimant had not worked more than 40-50 minutes on any day. Exhibit W-4 is reply submitted before RLC contending that claimant had worked for 40-50 minutes. Exhibit W-5 is letter dated 23-9-2010 about amalgamation of Rajasthan Bank in ICICI Bank. Exhibit W-6 is reply filed before RLC contending that employee working more than 30 days is eligible for bonus. Exhibit W-7 is also reply submitted by management contending that part time employee working more than 30 days would be eligible for bonus. Exhibit W-8 is affidavit of evidence of management's witness Ramdev in R/1/09. In his cross-examination, management's witness

has deposed that he had seen vouchers about payment of workman for 40-50 minutes in a day. Management's witness claimed ignorance whether workman was also doing work of distribution of dak. The documentary evidence discussed above clearly shows that workman was working in the Bank from 96 to 25-1-04.

8. Under Section 8 of Payment of Bonus Act, it is provided that every employee shall be entitled to be paid by his employer in an accounting year bonus in accordance with provisions of act provided he had worked not less than 30 days in a year.

9. Engagement of workman is admitted and also established from document Exhibit W-2. Documents about working days are not produced. Management's witness also admitted payment of wages for the workman. That no documents are produced. Documents about payment of wages to the workman must be certainly in custody of the management. Copy of award in R/1/09 is submitted for perusal. It was held that workman had not established working more than 240 days. Dispute involved in R/1/09 pertain to termination of services of workman in violation of Section 25-F, G,N of ID Act. As per Section 8 of Payment of Bonus Act, employee becomes eligible for bonus after completing 30 days working. Therefore the award passed in R/1/09 cannot be said vital for workman from claiming bonus.

10. Learned counsel for 2nd party Shri Ashish Shrotri further submits that the Bank of Rajasthan is merged in ICICI Bank on 12-8-2010. As per the document of merger, 1st party is not entitled for absorption in service. That claimant workman was not working in the Bank after merger as such there is no employer employee relationship. 2nd party Bank is not liable for payment of bonus. Copy of amalgamation scheme is made available .

“Clause 2(e) of the Scheme defines said liabilities shall mean all debts, demand deposits, saving bank deposits, term deposits, certificate of deposits, time and demand liabilities, borrowings whether rupee or foreign currency, bills payable including tax liabilities and other liabilities. The duties and undertakings and obligations of the transferor Bank, whether or not disputed or the subject matter of any court, arbitration or other proceedings as on the effective date.”

Learned counsel for management Shri Ashish Shrotri submits that in view of Section 21 of Payment of Bonus Act, application for bonus needs to be submitted within one year. The dispute is raised beyond said period is not tenable. Section 22 of Payment of Bonus Act provides in case of dispute between parties, dispute can be referred and requires to be decided. Claimant has raised dispute which has been referred. If dispute is tenable in view of Section 22 of Payment of Bonus Act, the argument advanced by Shri Shrotri cannot be accepted.

Ist party is claiming bonus for the period 1-3-96 to 15-3-05 prior to date of amalgamation. Considering definition of liabilities, certainly Bank is liable for the claim of bonus. As Ist party workman was working on casual basis during the year 2001 to 25-1-04 as per Exhibit W-2 and documents about working days of Ist part are not produced. As per Section 10 of Payment of Bonus Act, Ist party claimant is entitled for minimum bonus of 8.33 % of the wages paid to him. For above reasons, I record my finding in Point No.1 in Affirmative.

11. In the result, award is passed as under:-

- (1) The demand of the Union, Dainik Vetal Bhogi Bank Karamchari Sangathan for payment of bonus for the period from 1-3-96 to 25-1-2004 instead of 15-1-05 to Shri Bhupendra Pawar is legal and proper.
- (2) 2nd party management is directed to settle minimum bonus amount at the rate of 8.33 % on amount of wages paid to Ist party workman. After settling the amount of bonus, same be paid to Ist party workman within period of 30 days of publication of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 22 जून, 2017

का.आ. 1559.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 117/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.06.2017 को प्राप्त हुआ था।

[सं. एल-41012/38/2001-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 22nd June, 2017

S.O. 1559.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 117/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 22.06.2017.

[No. L-41012/38/2001-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR
NO. CGIT/LC/R/117/2001**

Smt.Nanudi Bai,
W/o Late Santosh Deva,
Gram Kalakund, Barekheda,
Tehsil Mhow,
Distt. Indore (MP)

...Workman

Versus

Divisional Railway Manager,
Western Railway,
Ratlam (MP)

...Management

AWARD

Passed on this 21st day of April 2017

1. As per letter dated 20-6-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/38/2001-IR(B-I) The dispute under reference relates to:

“Whether the action of the management of Divisional Railway Manager, Western Railway, Ratlam by not regularizing the services of Shri Santosh Kumar Deva even after screening is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 4/1 to 4/3. Case of workman is that he was working as labout with IOW Mhow till 1994. He was engaged as casual employee with IOW Mhow and working as mason. During 1994, 95 he was called for screening test conducted by the department. He attended screening test. All documents were in office of DRM, C.Rly, Ratlam, screening test was conducted for absorption as class IV employee. Workman has given questions asked to reply given by workman. That document about educational qualification was called from him. He submitted certificate about passing 5th standard. Affidavit was also submitted by him on direction of officer. He belongs to Bhil community a ST. he submitted domicile and caste certificate. Though he had submitted the information, he was not appointed. On such ground, workman prays for his absorption/ regularization on post of labour.

3. 2nd party filed short written statement at Page 8/1 to 8/2. 2nd party submitted that scrutiny test was carried for absorption in Grade D employees on 22-11-94. Workman was called with relevant documents. Understanding was also given that if documents were not produced, the candidates shall not be considered putting him absent in screening test. Before screening test, workman submitted documents. His date of birth was 20-6-69, date of appointment was 20-1-80, age of workman at time of his initial appointment was 11 years. He was underage at the time of initial appointment. Workman was again called on 11-1-95 for furnishing information but he was absent, documents were not produced. The screening was during the year 94-95, dispute was raised on 30-8-99. Claim of workman deserves to be rejected.

4. Ist party had submitted proposal for settlement. 2nd party had objected to it. Thereafter 2nd party submitted detailed written statement at page 14/1 to 14/4. 2nd party submitted that the proposal for settlement was submitted on 12-5-06, 17-5-06, the contentions w.r.t. provisions of child employment 1986 not applied to the matter. Workman had not produced valid document about his date of birth. That casual card used to be issued to the employee after his appointment. Workman had not produced original casual card. In absence of said document, screening of workman could not be carried. That age of workman at the time of initial engagement was shown 19 years. Said averment has been denied by management. That meeting of screening committee was held on 22-11-94. The committee consisting of 4 members workman has not produced original document asked from him. Workman has raised dispute regarding

scrutiny test held in 1994 for absorption as regular employee. 2nd party submits as per railway rules, records are maintained for period of 15 years. Management cannot verify correctness of the record. Workman was not engaged during the period 20-1-80 to 1995. Workman is not entitled to be kept as employee on muster roll. Employee does not get any right. Claim of workman that on completion of 240 days service, his services were terminated without notice are denied as false. 2nd party prays for rejection of claim of workman.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Divisional Railway Manager, Western Railway, Ratlam by not regularizing the services of Shri Santosh Kumar Deva even after screening is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order

REASONS

6. Term of reference pertains to denial of regularization to workman Santosh Kumar. Workman filed affidavit of his evidence supporting his contentions in statement of claim. Since 20-1-80, he was working with IOW Mhow. During the year 1994-95, screening of casual employees was undertaken by the department. He was called with documents at Ratlam office. That at the time of interview, he had submitted certificates about his date of birth and education. After screening, one Dhan Singh, Bhagwandas, Mangilal were regularized, he was not regularized in service. His services were terminated. That his date of birth is 20-6-61. While recording his date of birth in English, error was committed and same was recorded 20-1-69. At the time of initial engagement, he was of 19 years age and major he was not minor. His services were terminated after 14 years unblemished service. He is unemployed. From evidence, documents W-1 to 16 are admitted in evidence. In cross W-17 to 20 were admitted in evidence. Workman in his cross says he cannot read W-13, said letter was issued to him by Railway Administration. Documents W-4 to 16 were issued to him under RTI Act. He denies that despite repeated letters issued to him, he not produced documents. He denies that as he did not produce documents, screening committee did not consider his claim for regularization. Workman told his present age is 54 years, he was unable to tell her age in 1994. Witness at end of his cross says he was not sent any letter for screening.

7. Management's witness Santram Meena in his affidavit says workman as called for screening on 22-11-94 with original documents. Workman did not produce original documents. He was informed that if documents were not produced, he will not be considered. Letter dated 11-1-95 was written to PWI Mhow. On 4-4-95, last notice was issued to PWI Mhow. If information was not issued. It will be presumed that he was not working in the establishment. As per letter dated 25-11-94, from PWI Mhow, information as received that workman was not working on muster during the period 1980 to 1995. From his evidence documents M-1 is admitted in evidence. Management's witness in his cross says during 1980 to 1994, he was not posted at Mhow office. During the year 94-95 he was posted at DRM Ratlam. He admits that casual employees can be regularized in service. He was unable to tell what was the prescribed age for regularization of casual employees. That bill clerk in subordinate office sent information. On its basis, information under M-1 was sent. He claims ignorance on what basis, date of birth of workman as recorded in M-1. Management's witness was unable to tell what procedure was followed while engaging casual employees, permission of superior officer was not taken. Appointment letter was not issued. The attendance was recorded by subordinate office in the attendance card. Attendance card may be available in the subordinate office. Management's witness was unable to tell at what rate workman was paid. Management's witness was unable to tell whether workman is in service.

8. It is clear that management's witness has no personal knowledge. Service card is not produced. In document M-1, name of workman is appearing at Sl.No.29. his date of birth is shown 20-6-69, date of joining 20-1-80, educational qualification 5th standard pass. Working days-165, in remark- endorsement is made cannot be examined in absence of service record. As per evidence of management's witness, information in M-1 was sent as per information received from subordinate office. Management's witness was unable to tell what was the basis of recording date of birth of workman. The documents produced by workman Exhibit W-17 workman was informed that information could not be supplied to him. That report of vigilance was not received. In Exhibit W-18 letter dated 22-11-94 there is reference that information was not submitted, no second chance would be allowed. The information called pertaining to casual labour card, certificate of date of birth, caste certificate, educational qualifications, other qualifications like ITI. In Exhibit W-19, details of the workman shown as given in M-1 endorsement is made record is not available. In Exhibit W-20, letter dated 11-1-95, information as called for screening of casual employees name of workman is appearing at Sl.No.25 working under Inspector, Mhow. Letter dated 11-1-95 is also produced at Exhibit 20 information was called

till 23-1-95, name of workman is appearing at Sl.No.20. the details about workman are shown identical to details shown in Exhibit M-1. In Exhibit W-4, office note details about workman are shown. His date of birth is recorded 20-1-69. As observed above, management's witness was unable to tell on what basis date of birth was recorded. Exhibit W-5,6 are pertaining to information requested by workman could not be supplied to him. Exhibit W-7 is letter sent by Assistant Divisional Engineer, Mhow to DRM, Ratlam finds reference that the information w.r.t. documents of date of birth, educational qualification, caste certificate was sent under said letter. Exhibit W-8 shows that information about date of birth, educational qualification was sent to DRM. Exhibit W-9 is copy of transfer certificate of workman, date of birth is recorded 20-6-61. Said document was sent to DRM, Ratlam along with letter Exhibit W-8. So far as document Exhibit W-10 refers to caste certificate, documents is not clearly visible. Under Exhibit W-11, workman has claimed that wage card was submitted by him before screening committee was not received back by him. Exhibit W-12 is letter dated 2-12-94 shows that after screening, list was prepared. Casual employees had not submitted information till 30-6-94 were not considered. Name of workman appears at Sl.No.29, details of information is shown identical to information shown in Exhibit M-1. As per Exhibit W-9, date of birth of workman was 20-1-61. In M-1, information submitted by office, date of birth of workman was incorrectly shown 20-1-69. The error was committed while submitting the information. Wrong information submitted by office resulted in denial of regularization to workman.

9. Workman died during pendency of reference on 4-11-15, his LRs are brought on record. For wrong information about date of birth of workman submitted in M-1 workman was denied regularization. Therefore action of the management is illegal. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No.2- In view of my finding in Point No.1 Ist party workman was denied regularization as his date of birth was wrongly recorded 1969 instead on 20-6-61. Workman died during pendency. Therefore question of regularization to the workman is frustrated by his death. Considering workman was in continuous service from 1980 to 1995, he was denied regularization because of wrong information submitted about his date of birth by the office. Considering above factual aspects, regularization/ reinstatement of workman is not possible. Considering the facts on record, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management of Divisional Railway Manager, Western Railway, Ratlam by not regularizing the services of Shri Santosh Kumar Deva even after screening is not proper and legal.
- (2) 2nd party management is directed to pay compensation Rs. One Lakh to the widow of deceased workman Nanudi Bai.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 22 जून, 2017

का.आ. 1560.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 172/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.06.2017 को प्राप्त हुआ था।

[सं. एल-41012/88/2001-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 22nd June, 2017

S.O. 1560.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 172/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Central Railway and their workmen, received by the Central Government on 22.06.2017.

[No. L-41012/88/2001-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**
NO. CGIT/LC/R/172/2001

Shri Mahendra Singh,
C/o Mohan Singh, Water Tank No.8,
Bag Sewania, PO Bhouriakalan via University,
Bhopal (MP)

...Workman

Versus

Divisional Railway Manager,
Western Central Railway,
Bhopal (MP)

...Management

AWARD

Passed on this 17th day of May, 2017

1. As per letter dated 15-11-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/88/2001-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Central Railway, Erstwhile Jhansi Division presently Bhopal Division in terminating the services of Shri Mahendra Singh w.e.f. 3-6-86 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/4. Case of workman is that he was engaged as casual labor under IOW, Central Railway Mathura. He was working from 1978 to 1979. Thereafter he was again engaged during November 1982 as casual labour under PWI, Bhopal. After continuously working for 120 days, he was sent for medical examination in accordance with the Railway rules. That he was declared medically fit and appointed as MRCL under PWI Bhopal on 19-1-93. That he was continuously working under PWI Bhopal from 1983 to 1986. All of a sudden, his services were terminated on 3-6-86 on the ground that he obtained employment submitting false service card. Ist party workman further submits that he raised dispute before ALC. However ALC declined to enter into conciliation. Workman filed original application No. 859/89 before CAT, Jabalpur. That order of ALC dated 26-6-89 was set-aside by CAT. The ALC was directed to take up the matter for conciliation. After failure report submitted by ALC, Bhopal, the matter has been referred. Ist party further submits that he completed 240 days continuous service. He is covered as employee under Section 25 B of ID Act. His services are terminated violating Section 25-F of ID Act is void. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman at Page 7/1 to 7/3. 2nd party submits that workman was in possession of casual service card No. 278095 issued by PWI Mathura. As per workman, he worked under PWI Mathura, the workman was engaged by PWI, Central Railway Bhopal on 20-12-83 on production of casual service card. After completion of 120 days working, workman was granted temporary status as MRCL as per rules. Workman was paid wages. He was not working against regular vacancy rather workman was working as casual labour for special work. 2nd party further submits that card of Ist party was sent to PWI Mathura for verification. PWI Mathura verified that Card No. 278095 was not issued by him. On that Ist party workman was served 15 days notice dated 4-6-86 informing that if he fails to submit explanation, his services would be terminated. Workman failed to submit his explanation reply to the notice. Secondly management came to conclusion that the workman admitted his misconduct that he secured service under fake casual labour service card. Therefore there was no necessity to vitiate enquiry against workman. Ist party workman were terminated. It is denied that services of workman were abruptly terminated. 2nd party submits that workman was terminated violating Section 25-F of ID Act. Services of workman were terminated as he obtained employment on the basis of fake casual card. 2nd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Central Railway, Erstwhile Jhansi Division presently Bhopal Division in terminating the services of Shri Mahendra Singh w.e.f. 3-6-86 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

5. Point No.1- The term of reference pertains to legality of termination of services of workman. Ist party workman filed affidavit of his evidence but he remained absent for cross-examination. His evidence could not be considered.

6. Management filed affidavit of evidence of Iqbal Khan. Said witness of the management has stated in his affidavit that casual labour card No. 278095 was referred to PWI, Mathura. It was informed by said office that said card was not issued by the office. Notice was issued to workman on 4-6-86. Workman did not reply to said notice. Documents Exhibit M-1 to 3 were admitted in evidence. In his cross-examination, management's witness says workman was not working under him. The witness was not working at PWI Bhopal during 1978 to 1983. That Exhibit M-3 was received regarding the casual card was found bogus. As workman did not give reply to the notice that his card was found bogus, his services were terminated. Management's witness claimed ignorance whether the incident was reported to police. Evidence of management's witness is corroborated by documents. Evidence about casual service card submitted by workman was found bogus is corroborated by documents. W.r.t. termination in violation of Section 25-F of ID Act though workman filed affidavit of his evidence, he remained absent for his cross-examination. Therefore his evidence on the point cannot be accepted.

7. Learned counsel for management Shri Mukesh Tiwari relies on ratio in case between

Manager, Reserve Bank of India Bangalore versus S.Mani and others reported in 2005(5)SCC-100. Their Lordship held 240 days continuous service doesnot itself give right to claim permanency.

As workman has failed to adduce evidence and evidence of management's witness is corroborated by document and casual labour service card submitted by workman was fake, the services were terminated, I record my finding in Point No.1 in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the management of Central Railway, Erstwhile Jhansi Division presently Bhopal Division in terminating the services of Shri Mahendra Singh w.e.f. 3-6-86 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 22 जून, 2017

का.आ. 1561.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 87/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.06.2017 को प्राप्त हुआ था।

[सं. एल-12011/38/2013-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 22nd June, 2017

S.O. 1561.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 22.06.2017.

[No. L-12011/38/2013-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/87/2013

General Secretary,
Dainik Vetal Bhogi Bank Karamchari Sangathan,
F-1, Tripti Vihar, Opp Engineering College,
Ujjain (MP)

...Workman/Union

Versus

Chief General Manager,
State Bank of India,
Local Head Office,
Hoshangabad Road,
Bhopal (MP)

...Management

AWARD

Passed on this 16th day of May, 2017

1. As per letter dated 8-8-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/38/2013-IR(B-I). The dispute under reference relates to:

“Whether the demand of the Union for regularizing the services of Shri Narendra Sirsat from the date of termination is legal and justified? To what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through General Secretary, Daily Wages Bank Employees Union. Case of workman is that he was orally engaged on 15-12-2013 as permanent peon on daily wages. His wages were increased time to time from Rs.70, 90, 100, 120, 150, 170. He was required to work 6 days in a week Monday to Saturday. He was continuously working till 4-12-2010. He completed more than 240 days continuous service. His services were orally terminated without notice. The record about his working from 15-12-03 to 4-12-2010 is in the Bank. It is reiterated that he is covered as employee under Section 25 B. His services are terminated in violation of Section 25-F of ID Act. He was not served with notice of termination. Retrenchment compensation was not paid to him. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party submits that workman was engaged temporarily on daily wages at Khatiwala Tank Branch of State Bank of Indore. He worked for 19 days during the period 19-12-03 to 6-1-03, 71 days during 12-1-03 to 15-4-04, 114 days during 6-5-06 to 25-11-06, 228 days during 13-1-07 to 29-12-07 & 99 days during 5-1-08 to 31-5-08. Ist party was never appointed in Bank on permanent basis. It appears dates are incorrectly shown in Written Statement. 2nd party has reiterated that workman was engaged on daily wages purely on need basis. Workman is not entitled for regularization. Workman was not appointed following any kind of selection process. Workman has not completed 240 days continuous service. He was not terminated by the Bank. Workman not challenged his termination, his claim for regularization is not tenable. 2nd party has referred to ratio held in various cases contending that part time employees daily wage employees are not entitled for regularization.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the demand of the Union for regularizing the services of Shri Narendra Sirsat from the date of termination is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

5. Point No.1 The term of reference pertains to demand of Union for regularisation of workman from date of termination. Claim of workman is opposed by the management. Ist party has not adduced evidence. The representative of Ist party on 10-10-16 submitted not to adduce evidence. Management also not adduced evidence. Evidence of management is closed on 6-2-2017. Both parties have not adduced evidence in support of their contentions. Therefore contentions of workman that his services are terminated in violation of Section 25-F or he is entitled for regularization cannot be established. For above reasons, I record my finding in Point No.1 in Negative.

6. In the result, award is passed as under:-

- (1) The demand of the Union for regularizing the services of Shri Narendra Sirsat from the date of termination is not legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 27 जून, 2017

का.आ. 1562.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ मैसूर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 64/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27. 06.2017 को प्राप्त हुआ था।

[सं. एल-12012/7/2007-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1562.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (C.R. No. 64/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of Mysore and their workmen, received by the Central Government on 27.06.2017.

[No. L-12012/7/2007-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 29th MAY, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

CR No. 64/2007

I Party

Sri. K A Nagabhushana,
S/o Ananthaiah,
No. 62, 1st Floor, 5th Cross, 2nd Main,
Bhovipalya, Mahalakshmipuram Post,
Bangalore-560009

(For I party, M/s. Swamy & Singh, Advocates)

II Party

The General Manager,
State Bank of Mysore,
Head Officer, K.G. Road,
Bangalore-560009

(For II party M/s. R. Narayana &
N. Venkatesh Advocates)

AWARD

1. The Central Government vide Order No.L-12012/7/2007-IR(B-I) dated 29.05.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDELE

“Whether the action of the management of State Bank of Mysore in imposing the punishment of dismissal from the services without notice on Shri K.A. Nagabhushana, Ex-Cashier/Clerk, State Bank of Mysore, Nanjangud Branch is legal and justified? If not, to what relief the workman is entitled and from which date?”

2. Brief details mentioned in the Claim Statement are as follows:-

The I Party submits that, he has been appointed as Cashier/Clerk in the Nanjangud Branch of the II Party with effect from 16.01.1979. The I Party states that, he belongs to the ‘Maleru’ Community, and he has been appointed for the post, which has been reserved for SC/ST. At the time of appointment the I Party has produced all the relevant documents as instructed by the II Party Bank including the caste certificate issued by the Tahasildar, Bangalore North. Further, the II Party Bank filed a complaint against the I Party before the jurisdictional Police and it has been alleged that the I Party has produced a false caste certificate at the time of appointment. Further it is submitted that, the said matter has been adjudicated at great length and a detailed trial has been held before the Magistrate Court and on 09.05.2005, the I Party has been acquitted, after full trial. Further, the I Party has been informed that he cannot be taken for the duty as he has been dismissed from the service. It is submitted that, the I Party has made several representations from time to time, seeking for job, but none of his letters have been replied by the II Party Bank.

Further, the I Party states that, as a matter of fact, the I Party has not been issued with any documents pertaining to domestic enquiry said to have been conducted by the II Party, as stated during the conciliation. The I Party has been acquitted on merits and the I Party has not been issued with any notice or intimation about the enquiry. Looking from any angle, the action of the II Party is totally illegal, unjustified, unsustainable and liable to be set aside. Further, the I Party workman has a large family, who are entirely dependent on him and the I Party, after being terminated from the service, is without employment and is suffering great hardship and financial difficulty, inspite of his best efforts. Therefore, the I Party prays that this Court may be pleased to answer the points of dispute in favour of the I Party by holding that the action of the II Party in dismissing the I Party from service is illegal and unjustified and further, to direct the II Party to reinstate the I Party in his original post, with all consequential benefits like full back wages, continuity of service, etc., along with the cost of these proceedings, in the interest of justice and equity.

3. Brief details mentioned in the counter statement are as follows:-

The II Party states that, the F.I.R has been filed against the I Party/workman by the CRE Cell of the State Police and not on the complaint made by the II Party/Bank. The I Party cannot draw any advantage from his acquittal in the criminal case. The question of verification on the caste certificate issued by the Tahsildar never arose as the certificate has been issued by a Competent Public Authority, merely on the basis of the caste affidavit filed by the I Party himself. In fact, the CRE Cell after investigation, filed the FIR against the I Party, as the Government of India has taken a Policy decision to prevent misuse of the reservation policy by ineligible persons and directing, stringent action against such persons. Further, the I Party has been dismissed from service for proven serious misconduct of producing a false caste certificate and securing employment with the II Party as belonging to a Schedule Tribe and in fact, he is a Brahmin, and also, after a domestic enquiry has been conducted between 23.12.1987 and 02.05.1988 by Sri. Y.G. Aithal, Enquiry Officer. The II Party states that, the I Party has never cared to find out the above developments till 2005 and he could not be contacted by the II Party, for want of his correct address, as he has been shifting his residence without intimation to the II Party/Bank. The I Party moved the conciliation machinery on vague allegations only in the year 2006 which ended in failure resulting in the present reference. The reference is liable to be rejected on the ground of inordinate delay and laches. Since, the I Party could not be served through post for want of his correct address, Newspaper publication has been effected, and the enquiry has been concluded on 02.05.1988. Further, the I Party has been dismissed from service, for proven misconduct, on the basis of a proper domestic enquiry held against him. The II Party states that, the I Party is not entitled to any relief, either interim or final as sought in the claim statement and the reference is liable to be rejected as hopelessly belated, baseless and without any merit by imposing heavy costs and the II Party prays, accordingly.

4. The crucial point that arises for consideration in the present matter is:-

“Whether the action of the management of State Bank of Mysore in imposing the punishment of dismissal from the services without notice on Shri K.A. Nagabhusana, Ex-Cashier/Clerk, State Bank of Mysore, Nanjangud Branch is legal and justified? If not, to what relief the workman is entitled and from which date?”

5. Analysis, Discussion Findings with regard to the above mentioned point:-

In the counter statement the II Party has clearly stated that the I Party has secured the job with the II Party by producing a false caste certificate and the I Party has been dismissed from service for proven serious misconduct for producing a false caste certificate and securing employment with the II Party/Bank as belonging to the Schedule Tribe. Further, II Party has stated that, the Domestic Enquiry has been conducted and the enquiry has been concluded on 02.05.1988 and thereafter the order on dismissal has been passed by the Competent Authority. It is relevant to point out that the II Party has admitted in para 8 of the counter that the I Party has been dismissed from service for proven misconduct on the basis of the proper Domestic Enquiry held against him. Even, MW-1, Chief Manager, has admitted that the I Party has been acquitted by the Criminal Court and the Enquiry Officer has conducted the enquiry against the I Party and has submitted his report and thereafter the Disciplinary Authority has dismissed the I Party from service in the year 1988 for the proved, act of misconduct. Hence, it is crystal clear that II Party has relied upon the findings of the Enquiry Officer and also dismissed the I Party from service on the ground that I Party has got appointment by producing false caste certificate that I Party belongs to Schedule Tribe Community. Further, II Party has produced the Criminal Court judgment passed in Criminal Case No. 14269/99 dated 09.05.2005 regarding acquittal granted for the alleged charge made as against the I Party, along with memo dated 10.03.2011.

6. Further, as per Ex M-3, in the objection to the rejoinder filed on behalf of the II Party herein in the conciliation proceedings, it is clearly pointed out that the Enquiry Officer has submitted the report dated 23.05.1998. Further, the II Party has, admittedly, provided employment to the I Party based upon the community certificate issued by the Tahsildar, Bangalore North Taluk, in the year 1978 itself, to the effect that the I Party belongs to ‘Maleru’ Community which is recognised as Schedule Tribe Community and on 30.12.1978 itself the I Party has been appointed as cashier/clerk in the II Party/Bank. Subsequently, in the enquiry proceedings it is held that the I Party has produced the false community certificate claiming that he belongs to Schedule Tribe Community. Further, in the W.P. No.

4395/2007, dated 29.05.2007, in the case of M/s. Hindustan Aeronautics Limited Vs Sri. Bakkappa, (Before Mr. Justice Subhash B. Adi), the Hon'ble High Court of Karnataka has categorically held as follows:- “The Labour Court, relying on the judgment of the Apex Court in the case of **Kumari Madhuri Patil and another Vs Additional Commissioner, Tribal Development and others** reported in AIR 1995 Supreme Court-94 held that petitioner has no authority to determine the caste of the respondent and it is the Caste Verification Committee, which is the competent authority to determine the caste of the respondent and accordingly allowed the dispute raised by the respondent and set aside the order of dismissal and directed the petitioner/management to reinstate the respondent in his original post with back wages with continuity of service and other consequential benefits. However, liberty was given to petitioner-management to send the caste certificate produced by the respondent to the Caste Verification Committee constituted by the State Government for the purpose of verification and for proper orders..... In view of the dictum laid down by the Apex Court in the judgment cited supra, the Labour Court justified in allowing the dispute raised by the respondent/employee, inasmuch as, the order of dismissal suffers from lack of authority for the respondent to hold departmental enquiry against the respondent/employee. However, the question as to whether the caste certificate produced by the respondent is genuine or not is to be determined by the Caste Verification Committee. If the Committee found that the caste certificate submitted by the respondent is not genuine then it would be open to the petitioner/management to take such action as deem fit against respondent/employee. Before taking such recourse, it is not proper on the part of the petitioner to issue dismissal order against the respondent..... Writ Petition is disposed of with a direction to petitioner/management to avail the liberty already given by the Labour Court and refer the matter to the District Caste Verification Committee for the purpose of determining as to whether the respondent belongs to “Schedule Tribe Caste” or not and thereafter to take appropriate action against the respondent.” The same has been confirmed by the Hon'ble High Court of Karnataka in W.A. No. 1687/2007, dated 19.12.2007, in the case of M/s. Hindustan Aeronautics Limited Vs Sri. Bakkappa, (Before Mr. Justice S.R. Bannurmath and Mr. Justice A.N. Venugopala Gowda).

7. For the above mentioned reasons, it is found that, the procedure adopted by the II Party is incorrect and Enquiry Officer has no right to determine the caste of the I Party/workman as clearly observed by the Hon'ble High Court of Karnataka in the above mentioned W.P. and the II Party/management has to avail the liberty to refer the matter to the District Caste Verification Committee, as to whether the I Party belongs to Schedule Tribe or not and thereafter to take appropriate action against I Party. Further, the report on Community Status has to be obtained by following the various method of Study:

1. Personnel observation
2. Genealogy technique
3. Case study
4. Closed interview
5. Reference of documents

And also by taking the Ethnography details into consideration. Further, in the judgment reported in the Hon'ble High Court of Madras in W.A. No. 977 and 978/1999 and WAMP No. 133/2007, dated 19.09.2007, (Before Mr. Justice Elipe Dharmarao and Mr. Justice S. Tamilvanan), in the case of the Management of EID Parry (India) Ltd., Vs The Government of Tamilnadu, it is held as follows:- In Ram Avtar Sharma Vs State of Haryana [AIR 1985 SC 915], their lordships of the Hon'ble Apex Court have held as follows:- “Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. He would further submit that the Government is not restrained to refer the matter when it has satisfied that there exists an industrial dispute to be adjudicated upon by the Labour Court. A common judgment has been passed by the Division Bench of this Court on 06.01.2006 in W.A. Nos. 977 to 979 of 1999, only the appellant in W.A. No. 977 and 978 of 1999 viz. EID Parry (India) Ltd has preferred SLP before the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court has passed the order, extracted supra. We have already extracted section 10(1) of the Act which enables the appropriate Government that if any “industrial dispute exists” or apprehended and on satisfaction, to refer any matter in connection with the industrial dispute to a Court at any time. It will be useful to refer that in Sultan Singh's case (1996 (2) SCC 66), the Hon'ble Supreme Court has held that sub-section (5) of section 12 of the Act does not enjoin the appropriate Government to record reasons for making reference under section 10(1). It enjoins to record reasons only when it refuses to make a reference.....” In the present case also, as per Ex M-1 conciliation petition, has been filed before the Conciliation Officer by the I Party herein and objection has been filed on behalf of II Party as per Ex M-2. After that, the present reference has been made by the Government of India in Reference No. 12012/7/2007-IR(B-I) with the above mentioned schedule on 29.05.2007.

8. Further, in the Hon'ble High Court of Allahabad in W.P. No. 28348/1992, dated 07.08.1992, (Before Mr. Justice Palok Basu), in the case of U.P. State Spinning Milss Co.,Vs State of U.P & Ors., it is held as follows:- “Lapse of 11 years between raising a dispute and making reference does not lose the character of industrial dispute.” And also, in

the Hon'ble High Court of Delhi in W.P. No. 4317/1999, dated 04.10.2001, (Before Mr. Justice Mukundakam Sharma), in the case of Mangal Singh Vs Presiding Officer, Industrial Tribunal No.1, Delhi and another, it is held as follows:- "Relief under Industrial Disputes Act, 1947 not to be denied to workman on ground of delay." Further, in the Hon'ble High Court of Bombay in W.P. No. 3999/1999, dated 07.12.2001, (Before Mr. Justice R.M. Lodha and Mr. Justice D.B. Bhosale), in the case of Haribabu s/o Gaman Wagchaure Vs State of Maharashtra and another, it is held as follows:- "Delay and laches – Limitation Act does not apply to proceedings under Industrial Disputes Act, 1947 – If plea of delay be raised, employer to show real prejudice caused by delay and not rely on it as mere hypothetical defence." Further, the contention of the management that reference must fall on account of long delay is not to be entertained in the light of now well settled principles of law that reference cannot be rejected on the score of the delay itself but relief as such could be moulded as laid in a decision rendered on 28.09.2007 by their lordship of Supreme Court in the case of Karan Singh Vs Executive Engineer, Haryana State Marketing Board (Civil Appeal No. 4561/07) (arising out of SLP (C) No. 26379/05). Therefore, the above said contention of the management must also fail. In the present case also I Party has clearly stated in his evidence that after the acquittal in the Criminal Case he approached for employment and he gave letters dated 04.08.2005 and 04.10.2005 and delay has happened due to the bonafide reasons only and one Y.D. Subramanya has been served with similar charge sheet and the workman who are issued with similar charge sheet have been reinstated into the service and hence there is discrimination caused to the I Party by the II Party.

9. The MW-1, namely Chief Manager, has also admitted that one Y.D. Subramanya has been issued with similar charge and his suspension has been revoked on 15.11.1990 as per the Order of Hon'ble Supreme Court of India in W.P.No. 11894/1985 in the case of M. Narayananappa Vs Government of Karnataka and Another reported in 1998 (8) SCC 321. On that ground only, I Party has pointed out that there is victimization and discrimination caused to the I Party by the II Party. Further, MW-1 has admitted that it is true to suggest that, charge sheet issued to Y.D. Subramanya is related to caste certificate. For the above mentioned reasons it is crystal clear that a direction is to be given to the II Party to refer the matter to the District Caste Verification Committee for the purpose of determining as to whether the I Party belongs to "Maleru/Schedule Tribe Caste" or not and thereafter to take appropriate action against the I Party. Further, all materials, which are logically probative, for a prudent mind to come to the conclusion, are permissible in the industrial adjudication and on that ground also it is seen that the II Party has to refer the matter to the District Caste Verification Committee for the purpose of determining as to whether the I Party belongs to "Maleru/Schedule Tribe Caste" or not and thereafter to take appropriate action against the I Party depending upon the exigencies of the situation. Further, MW-1 has admitted that I Party has been dismissed by order of dismissal in the year 1988.

10. Further, the awarding of reinstatement does not amount to automatic conferment of back wages as held in 2009 (4) LLJ 667 (SC) Malla C.N. Vs State of Jammu and Kashmir & others. Further, it is held by the Hon'ble Supreme Court, in the case of APSRTC Vs B.S. David Pal, reported in 2006 (2) SCC 282, that the entitlement of back wages is not automatic on reinstatement. Also, awarding of back wages, depend upon other factors and circumstances. The I Party has pointed out in the claim statement that the I Party has been thrown out of employment and is facing hardship. In the affidavit also, the I Party has stated that with no financial income he is facing great hardship. However, the claim of the workman that he is entitled for the full back wages, cannot be considered, having regard to fact that the I Party has not performed any work for II Party from 1988 to till date, for several years, and also, the workman has admitted in his evidence that he is helping his co-brother in cooking contract work, and he is earning about Rs. 2,000 to Rs. 3,000/- by assisting his co-brother in cooking contract work, and also, in order to balance the interest of both the parties, this Court is of the considered opinion that in the facts and situation of the present case, 50% back wages only can be granted to the I Party. Further, in the judgment reported in ILR 1996 KAR 1874, Mr. Justice. Kumar Rajaratnam, in the case of S. Rathnakar Amirth Kamath Vs K.S.R.T.C, it is held as follows:- "Industrial Dispute Act (Central Act No. 14 of 1947) Sections 2(s) & 25-F workman's removal from service without complying with section 25-F, held, illegal-having suffered a long litigation, held, entitled not only continuity of service but with 50% of back-wages." Accordingly it is found that in the above mentioned facts and circumstances, the I Party is entitled to get 50% back wages from the date of termination to till the date of reinstatement. Having regard to the facts and circumstances, and long gap from the date of dismissal of I Party, from 1988 to till date, it is seen that granting of 50% back wages would be adequate.

11. Further, in the Hon'ble High Court of Karnataka in W.P. No. 9974/2006, dated 07.01.2015, (Before Mr. Justice D.H. Waghela and Mr. Justice Budihal R.B), in the case of The Management of National Aerospace Laboratories Vs Engineering & General Workers Union and The Managing Director, it is held as follows:- "The jurisdiction of an Industrial Tribunal, therefore, is expansive and creative and not restricted to only enforcing or interpreting the contract of service or the extant legal provisions and it is not-fettered by the limitations of contracts and can even involve extension of existing agreement or the making of a new one, or in general, creation of new obligations or modification of old ones." Hence, it is found that, the I Party is entitled to get reinstatement with continuity of service, and other consequential benefits, but with 50% back wages, and the II Party is not justified in dismissing the service of I Party

with effect from the year, 1988, as pointed out by MW-1, Chief Manager (General Banking) in his affidavit dated 14.03.2013 . However, a direction is issued to the II Party/management to refer the matter to the District Caste Verification Committee for the purpose of determining as to whether the I Party belongs to “Maleru/Schedule Tribe Caste” or not and thereafter to take appropriate action against the I Party depending upon the exigencies of the situation. If the committee found that the caste certificate submitted by the I Party, is not genuine, then it is up to the II Party/management to take such action as deemed fit against the I Party. Thus, the point is answered, accordingly.

AWARD

The II Party/Management is not justified in dismissing the service of I party/Nagabhushana K.A with effect from the year 1988, as pointed out by MW-1, Chief Manager (General Banking) in his affidavit dated 14.03.2013, and II Party, is directed to reinstate the I Party with continuity of service, and other consequential benefits, but with 50% back wages, and the present reference is answered accordingly, without cost for the above mentioned peculiar facts and circumstances. However, a direction is issued to the II Party/management to refer the matter to the District Caste Verification Committee for the purpose of determining as to whether the I Party belongs to “Maleru/Schedule Tribe Caste” or not and thereafter to take appropriate action against the I Party depending upon the exigencies of the situation. If the committee found that the caste certificate submitted by the I Party, is not genuine, then it is up to the II Party/management to take such action as deemed fit against the I Party. Thus, the award is passed accordingly.

(Dictated, transcribed, corrected and signed by me on 29th May, 2017)

V. S. RAVI, Presiding Officer

List of Witness on the side of I Party:(V)

WW 1	Sh. Nagabhushana K.A, I Party/ workman
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List of Witness on the side of II Party:(V)

MW 1	Sh. K.R. Puttaswamy, Chief Manager(General Banking)/II Party
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Exhibit marked on behalf of I Party:(V)

Exhibits	Date	Description of Document
Ex W-1	18.10.2010	RTI reply sent by AGM
Ex W-2	07.01.2011	Reply to RTI Application, sent by DGM
Ex W-3	16.03.2011	Reply to RTI Application, sent by DGM
Ex W-4	08.09.2012	RTI, reply sent by DGM

Exhibit marked on behalf of II Party: (V)

Exhibits	Date	Description of Document
Ex M-1	14.02.2006	Conciliation Petition
Ex M-2	-	Objection filed on behalf of Respondent
Ex M-3	-	Objection to the Rejoinder filed on behalf of Respondent

नई दिल्ली, 27 जून, 2017

का.आ. 1563.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय रिजर्व बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 87/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.06.2017 को प्राप्त हुआ था।

[सं. एल-12011/13/99-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1563.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (C.R. No. 87/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Bharatiya Reserve Bank and their workmen, received by the Central Government on 27.06.2017.

[No. L-12011/13/99-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 22nd MAY, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

CR No. 87/1999

I Party

The General Secretary,
Bharatiya Reserve Bank Note Mudran
Employees Union,
No.7, Kalyan Bhavan Building.,
Thayagaraja Road,
Mysore – 570004

II Party

The Dy. General Manager,
B R B N M L,
Metagalli Industrial Area,
Mysore – 570016

AWARD

1. The Central Government vide Order No.L-12011/13/99-IR(B-I) dated 23.07.1999 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEME

“Whether the Bharatiya Reserve Bank Note Mudran Employees Union is justified in raising the following demands within one year from the date of extending benefits 10% more than the V Pay Commission recommendations:

Corrigendum dated 02.02.2015

The Ministry's Order of even No. Dated 23.07.1999, the Schedule is amended as under:-

- (a) Enhancement Wage Scales.
- (b) Payment of Wages for the strike period, in spite of pending conciliation proceeding, from 22.05.1998.
- (c) Enhancement of Leave Travel, Leave and Holidays facilities.
- (d) Annual Bonus @ 20%, though the Payment of Bonus Act is not applicable to the Establishment.
- (e) Enhanced medical, education, conveyance, newspaper facilities/allowances and Festival Advance.

- (f) Accelerated promotion.
- (g) Shift, Productivity and Over Time Allowance.
- (h) Attendance Bonus.
- (i) Reduction in the number of working days and Permission for Late Entry.
- (j) Interest-free Loan facilities.
- (k) Compensation to workmen in the event of severe accident or death.
- (l) Free Electricity supply.
- (m) Abolition of staggered lunch system.

Counsel for both sides present. Memo of withdrawal filed dated 22.05.2017 by I party. It is stated in the said memo as follows:-

1 The I party has come forward to grant certain benefits to the workmen. The II party has also gave a draft copy of "Memorandum of Settlement" to the I party. Copy of the said draft Memorandum of Settlement is submitted herewith. Both the parties have maintained good industrial relation with each other. Most of the issues & claims of the workmen have been resolved amicably between both the parties bilaterally and the I party intends to continue the bilateral deliberations in further also.

2 The I party has agreed to the terms of the offer made by the II party and has informed the same to the II party. Accordingly, the I party has agreed to withdraw the present withdraw the present industrial dispute pending before this Tribunal.

3 Hence, the I party prays this Tribunal may be pleased to permit the I party to withdraw the present industrial disputes pending before this Tribunal and may be pleased to pass an award in terms of this memo, in the interest of justice."

4 Received the copy, endorsement is also made on behalf of II part and II party has not raised any objection to the said memo filed by the I party.

AWARD

In the light of the memo dated 22.05.2017 and memorandum of draft settlement of the month of May 2017 the present matter shall stand dismissed as withdrawn. The terms of the said memo shall form part and parcel of the present award for better and proper understanding.

(Dictated, transcribed, corrected and signed by me on 22nd May, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 27 जून, 2017

का.आ. 1564.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कृष्णा ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 10/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27. 06.2017 को प्राप्त हुआ था।

[सं. एल-12012/22/2015-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1564.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (C.R. No. 10/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Krishna Gramina Bank and their workmen, received by the Central Government on 27.06.2017.

[No. L-12012/22/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

DATED : 30th AUGUST, 2016

PRESENT : Shri V. S. RAVI, Presiding Officer

CR No. 10/2015

I Party

Shri. Mallikarjuna Sangappa,
R/o Door No.10-14,
Gandhi Chowk,
Shahpur, Yadgir Dist.,
Karnataka – 585223

II Party

1. The General Manager,
Krishna Gramina Bank,
HO, PB # 4,
Kunsoor Rd, Gulbarga– 103
2. The Manager,
Krishna Gramina Bank,
Shahpur Branch,
Yadgir Dist., Karnataka - 585223

AWARD

1. The Central Government vide Order No. L-12012/22/2015-IR(B-I)dated 12.02.2015 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the action of the management of Krishna Gramina Bank (Now Pragati Krishna Gramina Bank), Shahapur Branch in awarding the punishment of dismissal w.e.f 25.11.2009 against Sh. Mallikarjun Sangappa, who was working as messenger, is proper, legal and justified?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the Ist party and Ist party also called absent for the hearing on 08.04.2016. On 16.08.2016, once again notice for hearing, has been sent to both the parties by RPAD and also due service of notices, have been effected by the Department of Posts, India. Still, no representation has been made on behalf of Ist party and also, Ist party is called, absent.

3. Unfortunately, the Ist party has failed to make appearance before this Tribunal. Further, in the present matter, the Ist party has been furnished with sufficient and adequate opportunities to make his submissions, in the present case. It is the settled law, that the particular matter has to be judged, in the light of its facts and circumstances of the said matter only. Already, reasonable opportunities have been granted to the Ist party to make his submissions. Therefore, it would be laying down the proposition, a little too broadly, to say that, even in an Award passed rejecting the Award for non-prosecution, it must be supported by elaborate reasons and details. After going through the material records, this Tribunal does not find any substance in the submission of the Ist Party. Further more it is seen that, the contentions of the Ist Party cannot be accepted for the above mentioned reasons also. Moreover, on the perusal of the material records, it can be very well said that the Ist Party is not interested to contest the present matter, on the question of fact and also on the question of law.

4. In the above mentioned circumstances, it would be very much clear in the present matter, that the I st party has no interest to contest the present matter. It is for the Ist party to make out a case that he has a right to continue in service of management and that the management has done a mistake in discontinuing her services. Further, on behalf of the II party Sri A.N . Chandrashekara, Senior Manager, Personal Wing, has appeared before this Tribunal and also, reported that, as per the provisions of law, the said action has been taken by the II Party.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by Ist party and the present reference has only to be rejected for non- prosecution. Therefore, keeping in view the conduct of Ist party in, not appearing before this Tribunal, despite due service of the notice, that too by way of RPAD and his conduct, in not filing claim statement, in support of the said reference, it is crystal clear that the Ist party is no more interested in prosecuting the claim against IIInd party. In the result and also in above mentioned facts and situations, it has to be held the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following order

ORDER

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 30th August 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 27 जून, 2017

का.आ. 1565.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ त्रावणकोर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 12/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27. 06.2017 को प्राप्त हुआ था।

[सं. एल-12012/80/2005-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1565.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 12/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of State Bank of Travancore and their workmen, received by the Central Government on 27.06.2017.

[No. L-12012/80/2005-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri K. Sasidharan, B.Sc., LLB, Presiding Officer

(Friday the 21st day of April, 2017/01st Vaisakha, 1939)

ID 12/2005

Workman : Shri. C. Ramesan,
Leela Nivas,
Near NES Block,
Vattiyoorkavu P. O,
Thiruvananthapuram – 13.

By Adv. Shri. A. Jayasankar

Management : The Managing Director,
State Bank of Travancore,
Head Office, Poojappura,
Trivandrum – 695012 (Kerala).

By Adv. Shri. Raynold Fernandez. N.

This case coming up for final hearing on 11.04.2017 and this Tribunal-cum-Labour Court on 21.04.2017 passed the following:

AWARD

This is a reference under clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) for adjudication.

2. The dispute referred for adjudication is:

'Whether the action of the management of State Bank of Travancore in dismissing Shri C. Ramesan, EX-DCCP of Kerala University Office Complex Branch, Trivandrum from service vide Order No. AGM/T/DPC/P&C/215 dated 15.04.04 is justified? If not, to what relief the workman concerned is entitled to?'

3. After the receipt of reference Order No.L-12012/80/2005-IR(B-I) dated 14.11.2005 issued by the Ministry of Labour, Government of India, summons was issued to the parties to appear, submit pleadings and produce documents to substantiate their respective contentions. The parties entered appearance through counsel and submitted their pleadings.

4. Originally as per the Preliminary Order dated 07.11.2006, this Tribunal held that the domestic enquiry conducted by the management is vitiated and hence invalid. Subsequently as per the Award dated 11.12.2007 this Tribunal set aside the dismissal order passed by the management and directed the management to reinstate the workman in service with continuity of service and consequential benefits, but without payment of back wages. This Tribunal also ordered stoppage of increments for two different periods.

5. Against that Award the workman filed WP(C) No.3894/2010(J) before the Hon'ble High Court of Kerala, Ernakulam. As per the judgment dated 06.10.2015, the Hon'ble High Court set aside the award passed by this Tribunal and remanded the matter for disposal afresh in accordance with law, after affording both parties to adduce evidence to substantiate their respective contentions.

6. Against that judgment the workman preferred Writ Appeal No.2469/2015 before the Hon'ble High Court of Kerala, Ernakulam. As per the judgment dated 01.11.2016 the Hon'ble High Court disposed the appeal and directed this Tribunal to pass an award afresh as directed in the judgment in the Writ Petition and with reference to the law as declared by the Apex Court in Neeta Kaplish Vs. Presiding Officer, Labour Court and another – 1999 (1) SCC 517.

7. After the disposal of the Writ Appeal, notice was issued from this Tribunal to the parties and they entered appearance through counsel. After the remand order passed by the Hon'ble High Court, Ernakulam, both parties have not adduced any evidence either oral or documentary.

8. The contentions in the claim statement filed by the workman in brief are as follows:-

The workman joined the service of the management bank as a peon on 29.09.1981. Subsequently he was posted as Daftary cum Cash Peon with a special allowance which did not involve promotion with a higher scale of pay. While working as such at the Kerala University Office campus branch, the disciplinary authority of the management bank issued memo No. DGM/T/ DPS/169 dated 04.02.2003 requiring the workman to submit explanation as to why disciplinary proceedings shall not be initiated against him. The allegations in the memo are:-

- “(i) You have caused an arrest warrant to be issued against you by the Principal Munciff, Thiruvananthapuram in E. P.573/01 in O.S. 389/96.
- (ii) You have on 25.07.2002, left the branch premises at about 12 noon without permission from the competent authority and entered into some altercation with outsiders.
- (iii) You have sent a complaint about this to the Registrar, University of Kerala. The said complaint is in the address and affiliation of a political party and your name appears as the General Secretary. You have not obtained the prior permission of the bank to undertake the position.
- (iv) You have misused the name of the bank and your status as an employee of the bank in the above complaint, creating an awkward situation for the Registrar of the University and putting the Bank in an embarrassing situation as the University is a very important constituent of the Bank.
- (v) Thereafter you went to the University Guest House, neglecting your work and without permission from the competent authority, in search of the alleged criminal assailants.
- (vi) You have also made unwarranted comments in the complaint about the competency of the appropriate authorities in allotting/ retaining rooms in the guesthouse, again misusing your status as an employee of the bank.
- (vii) You have issued cash cheque No.5886 dated 20.07.2002 for Rs.3000/- on your account SB 4775. The cheque was presented through clearing on 25.07.2002 and was returned due to insufficient balance in your account, the balance being Rs.27/05 only.
- (viii) You have again issued cash cheque No.8595 for Rs.3000 dated 20.07.2002 drawn on you account SB 4775. The cheque was presented through clearing on 25.07.2002 and was returned due to insufficient balance in your account the balance being Rs.27/05 only.
- (ix) You have again issued cheque No.5891 favouring SBI Cards for Rs.2100/- on 31.10.2002 drawn on your account SB 4775 without maintaining sufficient balance in the account. The cheque was presented by State Bank of India. On 11.11.2002 and returned due to insufficient balance in your account, the balance being Rs.1132/05 only.
- (x) You have again issued cheque No.5885 dated for Rs.10,000/- favouring Mr.Sreekumaran Nair drawn on your SB account No.4775. The cheque was presented on 19.12.2002 by Kerala State Co-operative Bank and returned due to insufficient funds in your account, the balance being Rs.83/05 only.

- (xi) You have demanded and accepted a bribe of Rs.45,000/- from Sri K. Shaji, Suresh Bhavan, Kottambally, Kandala, P.O. Katakkada on the pretext that you will prove employment for him in the State Bank of Travancore.
- (xii) You have guaranteed an NCL loan in the name of Smt S. Geethakumary, from the Trivandrum Main Branch of the KSFE Ltd. without obtaining prior written permission from the competent authority.”

9. In response to that memo of allegations, the workman submitted his statement of defence dated 26.02.2003 denying the allegations and explaining the real state of affairs. Thereafter the disciplinary authority issued order dated 14.03.2003 and appointed an enquiry officer to enquire into the charges and submit report. As per the memo dated 26.03.2003 the disciplinary authority framed the following additional charges and required the workman to submit explanation. The additional charges are:-

- “(i) That you have with fraudulent intentions demanded and accepted a sum of Rs.50,000/- as bribe from Sri. S. Jayakumar, Kizhakkekkara House, Chathalambattukonam, Vedivechankoil P.O., assuring and misrepresenting that his son will be given employment as Peon in the bank.
- (ii) You have taken the said Jayakumar to the residence of some people stating that they are high officials of the bank responsible for recruitment, and showed him copies of some appointment orders, with the fraudulent intention of making pecuniary gain, misleading him with the offer of appointment for his son.”

10. The workman submitted explanation to the additional charges on 03.05.2003. Altogether 14 charges were levelled against the workman. The enquiry officer conducted enquiry in relation to all the charges alleged against him.

11. The enquiry conducted against the workman is vitiated on the ground of unfairness on the part of the enquiry officer, denial of fair and reasonable opportunity to the workman to substantiate his contentions, failure to comply the principles of natural justice and partisan attitude on the part of the enquiry officer. The enquiry officer has not furnished the list of witness No.4 (PW4) examined on behalf of the management; the request for adjournment to cross examine this witness was disallowed by the enquiry officer; that no opportunity was afforded to the workman to adduce defence evidence; that the list of documents marked as Exts.P.Ext.17 and P.Ext.18 were not furnished to the workman; that the original documents were not produced by the management, though the marking of the same was objected by the workman. The workman has contended that the enquiry is vitiated and hence invalid.

12. On the basis of the enquiry report the disciplinary authority proposed to impose the following punishment:-

- “1. That the CSE be brought down to a lower stage in the scale of pay by two stages, with cumulative effect for charge No.1, charge No.2, charge No.3, charge No.4 and charge No.5 proved.
- 2. That the next increment due to the CSE be withheld for two years with cumulative effect for charge No.6, charge No.7, charge No.8, charge No.9, charge No.10 and charge No.12 proved.
- 3. That the CSE be dismissed without notice, for charge No.11, charge No.13, and charge No.14 proved.”

13. Against that order the workman submitted explanation dated 25.03.2004. The disciplinary authority failed to consider the submission by the workman and passed final order confirming the proposed punishment. The appeal filed by the workman before the appellate authority also ended in dismissal. The punishment imposed by the disciplinary authority and affirmed by the appellate authority is not maintainable in law. The disciplinary authority failed to appreciate the matter in issue in the correct perspective. The disciplinary authority failed to issue notice to the workman before proceeding with the charges found to be disproved by the enquiry officer. At any rate the punishment imposed is shockingly disproportionate and with lack of bona fides.

14. The workman had unblemished service of 24 years under the management bank. He has still 10 years more service to retire on superannuation. He and his family members are solely depending on the income from his employment for their livelihood. He has requested to pass an award setting aside the punishment order passed by the disciplinary authority and confirmed by the appellate authority, to reinstate him in service with back wages, continuity of service and all other attendant benefits and costs thereof.

15. The contentions in the written statement filed by the management in brief are as follows:-

The management has denied all the averments in the claim statement filed by the workman except those that are specifically admitted. The industrial dispute is not maintainable in law and on facts.

16. While working as ‘Daftary cum cash’ peon in the Kerala University office campus branch of the management bank, as per memo dated 04.02.2003; the workman Shri. C. Ramesan was charge sheeted for the following charges:-

- “(i) You have caused an arrest warrant to be issued against you by the Principal Munsiff, Trivandrum in E.P.573/01 in O.S.389/96.
- (ii) You have, on 25.07.2002, left the branch premises at about 12 noon without permission from the competent authority and entered into some altercation with outsiders.
- (iii) You have sent a complaint about this criminal activity to the Registrar, University of Kerala. The said complaint is in the address and affiliation of a political party and your name appears as the General Secretary. You have not obtained the prior permission of the bank to undertake the position.
- (iv) You have misused the name of the bank and your status as an employee of the bank in the above complaint, creating an awkward situation for the Registrar of the University and putting the Bank in an embarrassing situation as the University is a very important constituent of the Bank.
- (v) Thereafter, you went to the University Guest House, neglecting your work and without permission from the competent authority, in search of the alleged criminal assailants.
- (vi) You have also made unwarranted comments in the complaint about the competency of the appropriate authorities in allotting/ retaining rooms in the guest house, again misusing your status as an employee of the bank.
- (vii) You have issued cash cheque No.5886 dated 20.07.2002 for Rs.3000/- on your account SB 4775. The cheque was presented through clearing on 25.07.2002 and was returned due to insufficient balance in his account, the balance being Rs.27/05 only.
- (viii) You have again issued cash cheque No.8595 for Rs.3000/- dated 20.07.2002 drawn on your account SB 4775. The cheque was presented through clearing on 25.07.2002 and was returned due to insufficient balance in your account the balance being Rs.27/05 only.
- (ix) You have again issued cheque No.5891 favouring State Bank of Travancore Cards for Rs.2100/- on 31.10.2002 drawn on your account SB 4775 without maintaining sufficient balance in the account. The cheque was presented by State Bank of Travancore on 11.11.2002 and returned due to insufficient balance in your account, the balance being Rs.1132/05 only.
- (x) You have again issued cheque No.5885 dated for Rs.10,000/- favouring Mr.Sreekumaran Nair drawn on your SB account No.4775. The cheque was presented on 19.12.2002 by Kerala State Co-operative Bank and returned due to insufficient funds in your account, the balance being Rs.83/05 only.
- (xi) You have demanded and accepted a bribe of Rs.45,000/- from Sri.K.Shaji, Suresh Bhavan, Kottambally, Kandala, P.O. Katakkada on the pretext that you will provide employment for him in State Bank of Travancore.
- (xii) You have granted an NCL Loan in the name of Smt. S. Geethakumary, from the Trivandrum Main Branch of the Kerala State Financial Enterprises Ltd. without obtaining prior written permission from the competent authority. The above acts are in violation of the rules of conduct of service in the Bank and misconduct as per the following provisions of the Memorandum of Settlement dated 10.04.2002.”

17. The workman has committed misconduct as stipulated under Regulations – 5(e); 5(j); 7(c); 7(d) and 7(i) of the Memorandum of Settlement dated 10.04.2002 on Disciplinary Action and Procedure Therefor.

18. As per the memo dated 26.03.203, the following additional charges were framed against the workman:-

- “(I) That, you have with fraudulent intentions demanded and accepted a sum of Rs.50,000/- as bribe from Sri. S. Jayakumar, Kizhakkerekkara House, Chathalambattu Konam, Vedivechankoil P.O., assuring and misrepresenting that his son will be given employment as Peon in the bank.
- (II) That, you have taken the said Jayakumar to the residence of some people stating that they are high officials of the bank responsible for recruitment, and showed him copies of some appointment orders, with the pecuniary gain, misleading him with the offer of appointment for his son.”

19. He has committed the misconduct as specified under Regulation 5(j) of the Memorandum of Settlement dated 10.04.2002 on the Disciplinary Action & Procedure Therefor. He has submitted explanations on 26.02.2003 and 03.05.2003 denying the allegations levelled against him. It was not acceptable to the management. Therefore the management appointed Shri. T. K. Hariharan, as the enquiry officer and Shri. James Babuji as the presenting officer for the management. The enquiry officer conducted the enquiry in compliance with the principles of natural justice and affording fair and sufficient opportunity to the workman to substantiate his contentions. The defence representative Shri. Muraleedharan Pillai was permitted to cross-examine the witnesses examined on behalf of the management in the course of enquiry. No objection was raised by the workman and his representative while conducting the

enquiry. While recording the evidence of PW4 before the enquiry officer there was no objection from the side of the workman or his representative. So also the workman did not make any request to examine the witnesses on his behalf, even though opportunity was afforded to him. Moreover no prejudice has been caused to the workman as a result of the marking of Exts.PEX.17 and 18 documents for the reason that those documents are cheques issued by the workman to Shri. Shaji. Apart from this copy of the documents relied on by the management were furnished to the workman. There is no illegality or impropriety in the conduct of enquiry by the enquiry officer.

20. After obtaining the enquiry report, the disciplinary authority followed the procedural requirements and thereafter the preliminary order with the proposed punishment was served on the workman. After considering the submissions by the workman on the proposed punishment, the disciplinary authority passed final order on 15.04.2004. Against which the workman preferred appeal before the appellate authority. The appellate authority considered the matter in issue in detail after hearing the workman and rejected the appeal. The punishment imposed on the workman is just, legal, proper and in proportion to the gravity of misconduct committed by him. The management has requested to uphold their contentions and reject the claim put forward by the workman.

21. After filing written statement by the management, the workman filed rejoinder reiterating the contentions in the claim statement. It is stated that the enquiry officer denied opportunity to the workman to adduce evidence to substantiate his contentions. The workman has requested to uphold his contentions.

22. At the preliminary enquiry stage MW1 was examined and Ext.M1 was the document marked on behalf of the management. Ext.W1 was marked on behalf of the workman. As per the Preliminary Order dated 07.11.2006, this Tribunal held that the domestic enquiry conducted by the management in this case is vitiated and hence invalid. Thereafter on behalf of the management MW2 to MW6 were examined and Exts.M2 series, M3 and M4 series were marked. The workman tendered evidence as WW1. After hearing both sides this Tribunal passed an Award on 11.12.2007. The operative portion of the Award reads as follows:

"In the result, an award is passed finding that the action of the management in dismissing the workman from service w.e.f.15.04.2004 is not legal and justified as charges 11, 13 and 14 are not proved. He is entitled to be reinstated at the earliest as soon as the award becomes enforceable as per S-17 A of Industrial Disputes Act with continuity of service and consequential benefits, but without payment of backwages. However he is found guilty of first part of charge No.2, charges 3, 4, 7, 8, 9 and 10 and are liable for the punishment of stoppage of increment for a period not longer than six months as per clause 19.8(c) of Ist Bipartite Settlement. He is also guilty of charge No.6 and is punishable by withholding increments for two years with cumulative effect as provided in clause 21(iv)(d) of the 6th Bipartite Settlement. There is no order as to cost."

23. As per the above award, this Tribunal set aside the punishment of dismissal from service imposed on the workman.

24. The workman challenged the award by filing WP(C) No.3894/2008(J) before the Hon'ble High Court of Kerala, Ernakulam. As per the Judgment dated 06.10.2015 the Hon'ble High Court of Kerala set aside the Award dated 11.12.2007 passed by this Tribunal and remanded the matter for fresh consideration as regards the guilt or innocence of the petitioner on the charges framed against him in accordance with law. The Hon'ble High Court of Kerala has observed that the parties are to be given a further chance to prove the sustainability of the charges proved and an award afresh has to be passed on the basis of the evidence to be adduced by the parties.

25. Against that judgment the workman preferred Writ Appeal No.2469/2015 before the Hon'ble High Court of Kerala, Ernakulam. As per the Judgment dated 01.11.2016, the Hon'ble High Court of Kerala disposed the appeal directing this Tribunal to pass a fresh award as directed in the judgment under appeal, with reference to the law declared by the Apex Court in the judgment in Neeta Kaplish Vs. Presiding Officer, Labour Court and another (1999) 1 SCC 517.

26. After the disposal of the Writ Appeal notice was issued to the parties to appear before this Tribunal. After the remand order passed by the Hon'ble High Court of Kerala, both parties have not adduced any additional evidence or produced any additional documents. Heard the learned counsel appearing for the parties.

27. The points arising for consideration are:

- (i) Whether the workman Shri. Ramesan is guilty of the charges levelled against him by the management?
- (ii) Whether the punishment awarded by the management is in proportion to gravity of misconduct committed by him?
- (iii) To what relief the workman is entitled?"

28. Point No.(i):- The dispute referred for adjudication before this Tribunal is:

'Whether the action of the management of State Bank of Travancore in dismissing Shri C. Ramesan, EX-DCCP of Kerala University Office Complex Branch, Trivandrum from service vide Order No.AGM/T/DPC/P&C/215 dated 15.04.04 is justified? If not, to what relief the workman concerned is entitled to?'

The workman joined the services of the management bank as peon on 29.09.1981. Subsequently he was posted as Daftary cum Cash Peon. While working as such at the Kerala University office complex branch, the disciplinary authority of the management bank issued a memo dated 04.02.2003 requiring the workman to submit explanation as to why disciplinary action should not be initiated against him. The allegations in the memo are:-

- “1. You have caused an arrest warrant to be issued against you by the Principal Munciff, Thiruvananthapuram in E. P.573/01 in O. S.389/96.
- 2. You have on 25.07.2002, left the branch premises at about 12 noon without permission from the competent authority and entered into some altercation with outsiders.
- 3. You have sent a complaint about this to the Registrar, University of Kerala. The said complaint is in the address and affiliation of a political party and your name appears as the General Secretary. You have not obtained the prior permission of the bank to undertake the position.
- 4. You have misused the name of the bank and your status as an employee of the bank in the above complaint, creating an awkward situation for the Registrar of the University and putting the Bank in an embarrassing situation, as the University is a very important constituent of the Bank.
- 5. Thereafter you went to the University Guesthouse, neglecting your work and without permission from the competent authority, in search of the alleged criminal assailants.
- 6. You have also made unwarranted comments in the complaint about the competency of the appropriate authorities in allotting/ retaining rooms in the guesthouse, again misusing your status as an employee of the bank.
- 7. You have issued cash cheque No.5886 dated 20.07.2002 for Rs.3000/- on your account SB 4775. The cheque was presented through clearing on 25.07.2002 and was returned due to insufficient balance in your account, the balance being Rs.27/05 only.
- 8. You have again issued cash cheque No.8595 for Rs.3000 dated 20.07.2002 drawn on you account SB 4775. The cheque was presented through clearing on 25.07.2002 and was returned due to insufficient balance in your account the balance being Rs.27/05 only.
- 9. You have again issued cheque No.5891 favouring SBI Cards for Rs.2100/- on 31.10.2002 drawn on you account SB 4775 without maintaining sufficient balance in the account. The cheque was presented by State Bank of India on 11.11.2002 and returned due to insufficient balance in your account, the balance being Rs.1132/05 only.
- 10. You have again issued cheque No.5885 dated for Rs.10,000/- favouring Mr.Sreekumaran Nair drawn on your SB account No.4775. The cheque was presented on 19.12.2002 by Kerala State Co-operative Bank and returned due to insufficient funds in your account, the balance being Rs.83/05 only.
- 11. You have demanded and accepted a bribe of Rs.45,000/- from Sri.K.Shaji, Suresh Bhavan, Kottambally, Kandala, P.O. Katakkada on the pretext that you will provide employment for him in the State Bank of Travancore.
- 12. You have guaranteed an NCL loan in the name of Smt.S. Geethakumary, from the Trivandrum Main Branch of the KSFE Ltd. without obtaining prior written permission from the competent authority.”

29. To that the workman submitted explanation on 26.02.2003 denying the allegations. The explanation submitted by the workman was not acceptable to the management. Hence they appointed an enquiry officer to conduct domestic enquiry in relation to the charges alleged against the workman.

30. Subsequently the disciplinary authority of the management bank issued another memo dated 26.03.2003 and in that the following additional charges were alleged against the workman:-

- “1. That, you have with fraudulent intentions demanded and accepted a sum of Rs.50,000/- as bribe from Sri. S. Jayakumar, Kizhakkekkara House, Chathalambattukonam, Vedivechankoil P.O., assuring and misrepresenting that his son will be given employment as Peon in the bank.

2. That, you have taken the said Jayakumar to the residence of some people stating that they are high officials of the bank responsible for recruitment, and showed him copies of some appointment orders, with the fraudulent intention of making pecuniary gain, misleading him with the offer of appointment for his son.”
31. The workman submitted explanation to the additional charges denying the allegations. Altogether 14 charges were levelled against the workman. The enquiry officer conducted enquiry in relation to all the 14 charges levelled against the workman. After obtaining report from the enquiry officer the disciplinary authority, after complying the procedural requirements, imposed the following punishment:-
- “1. That the CSE be brought down to a lower stage in the scale of pay by two stages, with cumulative effect for charge no.1, charge No.2, charge No.3, charge No.4 and charge no.5 proved.
 - 2. That the next increment due to the CSE be withheld for two years with cumulative effect for charge no.6, charge no.7, charge no.8, charge no.9, charge no.10 and charge no.12 proved.
 - 3. That the CSE be dismissed without notice, for charge No.11, charge no.13, and charge no.14 proved.”
32. According to the management the workman has committed misconduct as specified under Regulations 5(e); 5(j); 7(c); 7(d) and 7(i) of the Memorandum of Settlement dated 10.04.2002 on Disciplinary Action and Procedure Therefor.
33. As already stated as per the Preliminary Order dated 07.11.2006 this Tribunal held that the domestic enquiry is vitiated and hence invalid for failure to comply the principles of natural justice. Thereafter the management side adduced the evidence of MW2 to MW6 and Exts.M2 to M4 series were marked. The workman also tendered evidence as WW1 and Ext.W1 is the document marked on his behalf.
34. The maintainability or otherwise of the charges alleged against the delinquent workman has to be analysed on the basis of the evidence tendered by MW2 to MW6 and Exts.M2 to M4 series documents. This is on the basis of the dictum laid down by the Hon’ble Supreme Court in – ‘*Neeta Kaplish v. Presiding Officer, Labour Court and another 1999 (1) SCC 517*’. In the decision referred above the Hon’ble Apex Court held that:
- “The record pertaining to the domestic enquiry would not constitute “fresh evidence” as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute “material on record”, as contended by the counsel for the respondent, within the meaning of Section 11-A as the enquiry proceedings, on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and, were in fact, relied upon by the Management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has been held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the Management ceased to be “material on record” within the meaning of Section 11-A of the Act and the only course open to the Management was to justify its action by leading fresh evidence as required by the Labour Court”.*
35. Charge Nos.(i) and (xii) in the first charge sheet relates to the same transaction. The allegation is that the workman stood as guarantor to one Smt. S. Geethakumary in a chitty transaction without the permission from the bank. While examined as MW5 the Manager of the Kerala University office complex branch of the management bank has stated that the application form containing the format for salary certificate was filled up and issued by the Manager and the purpose for which that certificate issued was to stand as guarantor in a chitty transaction. Therefore the contention of the management that the workman stood as guarantor in a chitty transaction for Smt. S. Geethakumary, without obtaining permission from the bank will not stand to reason. Hence charge No.(xii) against the workman cannot stand.
36. As regards charge No.(i), MW5 has stated that in relation to the chitty transaction, in execution of the decree in O. S.389/1996, the Amin from the court came to the branch with arrest warrant and at that time the workman was not found there and hence the Amin returned without executing the arrest warrant. MW5 has stated that on coming to know about the arrest warrant, the workman approached the Hon’ble High Court of Kerala and obtained stay order. There is nothing on record to prove that as a result of the aforesaid incident the reputation of the bank has been lowered. The evidence tendered by MW5 reveals that except himself none else was aware of the visit of the Amin in the bank premises. The learned counsel for the workman submitted that the financial liability in relation to the said transaction was discharged subsequently. There is no evidence to prove that the workman has violated any of the regulations in the Memorandum of Settlement dated 10.04.2002 on Disciplinary Action & Procedure Therefor. Hence the first charge as per the first charge memo also will not stand against the workman.
37. Charge Nos.(ii) to (vi) relate to one and the same incident. Regarding this incident which is alleged to have happened on 25.07.2002; the Deputy Manager of the branch – MW4 Smt.Sudhamani has stated that the workman had

gone out of the branch around noon, without obtaining permission from her. While examined as WW1, the workman has stated that on 25.07.2002, a staff from the Kollam branch requested him to enquire about the migration certificate of his daughter and for that purpose, after obtaining permission from MW4 he went to the Kerala University office to enquire about the same. MW4 has stated that she has not asked the workman to enquire about the academic details of any student on that day. The workman was not in a position to state the name of the staff for whom he went to the Kerala University office on that day. Therefore it is probable that the workman left the office during office hours on that day without obtaining permission from the higher officials. This action on the part of the workman amounts to ‘neglect of work’ or failure to follow the office procedure.

38. In the reply to the memo of charges the workman has stated that some students manhandled him while he was on the way to the University office. While examined as WW1 his version is not in tune with the reply to the memo of charges.

39. MW4 has stated that on the same day of the alleged incident the workman submitted a complaint and she forwarded the same to the Zonal Office on the next day. The said document or copy of the same has not been marked as an exhibit after passing the Preliminary Order. No steps were taken to prove the same. It is seen that the workman submitted a complaint on the next day of the incident before the Registrar of the University explaining in detail about the incident occurred. The evidence tendered by the workman as WW1 and the explanation submitted by him probabilise the fact that the allegations levelled against the workman by the management in this regard cannot be accepted as true and correct. There is no evidence to prove that the workman has committed any act of misconduct in this regard.

40. While examined as WW1 the workman has stated that even though he submitted a complaint before MW4 regarding the incident, no effective action was taken on that and hence he filed a complaint before the Registrar on 26.07.2002. It is true that the workman left the office premises during office hours and at that time the incident as alleged by the management happened. The anxiety of the workman would have prompted him to submit a complaint directly before the Registrar of the University. He ought not to have done so especially when the alleged incident occurred during office hours. Therefore it is evident that the workman has committed the misconduct of breach of any rule of business of the bank or insubordination for running of any department as per the clauses in the Bipartite Settlement on Disciplinary Action and Procedure Therefor.

41. While examined as WW1 the workman has admitted that he sent the complaint to the Registrar in his capacity as an office bearer of “Bharatiya Dalit Congress(I)”. He has admitted that this organization is affiliated to the Dalit wing of Congress(I). He has not obtained permission from the management bank to be an office bearer of an organization of a particular political party. The conduct on the part of the workman amounts to breach of the rule of business of the bank or bank’s instruction as per clause 19.7(d) of the Bipartite Settlement.

42. It has come out in evidence that the Registrar forwarded the complaint filed by the workman to the Zonal Manager of the management bank with a remark that he should not be put to trouble by an employee working in the bank. It appears that the Registrar was not happy with the contents of the complaint especially for the reason that the workman had exceeded his limit while submitting the complaint. The said act on the part of the workman reveals that he has acted in a manner prejudicial to the interest of the bank, which is clearly a misconduct as provided under clause 19.5(j) of the Bipartite Settlement.

43. The next aspect is relating to the issue of cheques and the consequent dishonouring thereof. Charges 7 to 10 in the memo of charges relates to these allegations. Charge Nos.7 to 10 as per the memo of charges dated 04.02.2003 read as follows:-

- “7. You have issued cash cheque No.5886 dated 20.07.2002 for Rs.3000/= on your account SB 4775. The cheque was presented through clearing on 25.07.2002 and was returned due to insufficient balance in your account, the balance being Rs.27/05 only.
- 8. You have again issued cash cheque No.8595 for Rs.3000 dated 20.07.2002 drawn on you account SB 4775. The cheque was presented through clearing on 25.07.2002 and was returned due to insufficient balance in your account the balance being Rs.27/05 only.
- 9. You have again issued cheque No.5891 favouring SBI Cards for Rs.2100/- on 31.10.2002 drawn on you account SB 4775 without maintaining sufficient balance in the account. The cheque was presented by State Bank of India on 11.11.2002 and returned due to insufficient balance in your account, the balance being Rs.1132/05 only.
- 10. You have again issued cheque No.5885 dated for Rs.10,000/- favouring Mr.Sreekumaran Nair drawn on your SB account No.4775. The cheque was presented on 19.12.2002 by Kerala State Co-operative Bank and returned due to insufficient funds in your account, the balance being Rs.83/05 only.”

44. While examined as MW4 the then Deputy Manager of the University campus branch has stated that the workman is having bank account with cheque facility with the management bank. She has stated that a letter was addressed to the Assistant General Manager informing that two cheques for ₹3000/- each in the name of the workman Shri. C. Ramesan have been dishonoured. MW4 has stated that Page No.115 in Ext.M1 is the copy of the extract of the cheque return register evidencing the dishonouring of the cheques in the name of Shri. C. Ramesan. She has stated that Shri. C. Ramesan assured that he will remit the required amount and hence those cheques were returned with the endorsement 'Funds insufficient'. MW4 has stated that Page No.118 in Ext.M1 file is the copy of the ledger extract of the bank account in the name of Shri. Ramesan. C and as per that document the balance amount between 17.07.2002 and 30.07.2002 was only ₹27.05.

45. While examined as MW5 the Manager of the Kerala University campus branch of the management bank has stated that a cheque for ₹10,000/- issued by the workman Shri. Ramesan. C to one Shri. Sreekumar was dishonoured due to insufficiency of funds. He has stated that the said act of the workman is a misconduct as it affected the reputation of the bank. MW5 has stated that he has no knowledge as to whether there was any proceeding under Negotiable Instruments Act in relation to the dishonouring of the cheques.

46. While examined as WW1, the workman has stated that when the cheque was presented for clearance, there was no sufficient balance, but on the next day he had settled that transaction. As regards the transaction in relation to the cheque for ₹10,000/- the workman has stated that he is only a guarantor to the education loan availed by his friend's son. This statement by WW1 cannot be accepted as true and correct especially in the absence of any supporting document to substantiate the same. Therefore in relation to the charge Nos.7 to 10 it is evident that the workman has committed the misconduct as stipulated under clause 19.7(l) of the Settlement. He has incurred debts in excess of his means and it is proved from the aforesaid transaction.

47. Charge Nos.11 & 13 as per the charge memos issued read as follows:-

- “11. You have demanded and accepted a bribe of Rs.45,000/- from Sri.K.Shaji, Suresh Bhavan, Kottambally, Kandala, P.O. Katakkada on the pretext that you will provide employment for him in the State Bank of Travancore.
- 13. That, you have with fraudulent intentions demanded and accepted a sum of Rs.50,000/- as bribe from Sri. S. Jayakumar, Kizhakkekkara House, Chathalambattukonam, Vedivechankoil P.O., assuring and misrepresenting that his son will be given employment as peon in the bank.”

48. These charges relate to the demand and acceptance of bribe of ₹45,000/- and ₹50,000/- from Shri. K. Shaji and Shri. S. Jayakumar respectively with the promise to provide employment. Shri. Shaji was examined as MW2 in this case. He filed a complaint on 19.12.2002 before the bank. Copy of that complaint is marked as Ext.M3. As per that complaint the workman assured to arrange employment to Shri. Shaji (MW2) in the bank and received ₹20,000/- each on two occasions and issued blank signed white papers. On the third occasion Shri. Shaji paid ₹5,000/- and at that time he demanded cheque for the total sum of ₹45,000/- and at that time issued cheque No.200857 dated 01.01.2003 relating to account No.6381 of the Vysya Bank to him. Subsequently Shri. Shaji did not obtain employment and at that time he demanded the amount from the workman. At that time the workman quarrelled with him. On enquiry with the bank the complainant Shri. Shaji came to know that the workman is not having bank account with Vysya Bank. It is seen that apart from the cheque aforesaid a promissory note was also issued by the workman. Subsequently the complainant returned the promissory note and obtained another cheque for ₹45,000/-. Those cheques are marked as Exts.M2 and M2(a). Both the cheques are dated 01.01.2003. The dates in the cheques were written by MW2 at the time when he presented the same for clearance. Exts.M4 and M4(a) are the cheque return memos issued by the Vysya Bank. On verification it is seen that Exts.M2 and M2(a) cheques do not bear the signature of the workman. Moreover those cheques were not issued to MW2 – Shri. Shaji.

49. The contention of the workman is that those cheques were issued by one Shri. Sreekumar and not by him. There is material discrepancy in the case set out in Ext.M3 complaint, the evidence tendered by MW2 and the case as revealed from the documents Exts.M2, M2(a), M4 and M4(a). Therefore, it is not possible to arrive at a conclusion that the workman initially signed blank papers, then issued promissory note and then issued two cheques for ₹45,000/- each relating to a transaction for ₹45,000/- as contended by the complainant in Ext.M3 and as spoken to MW2.

50. Moreover it is seen that there was delay of 2 ½ years after the alleged transaction and the date of filing Ext.M3 complaint. While examined as MW6 the uncle of Shri. Shaji has stated that from the bank it is informed to Shri. Shaji that the cheques were not that of the workman but that of one Shri. Sreekumar. The allegation against the workman is the acceptance of bribe from Shri. Shaji. In view of the material discrepancy in the evidence tendered by MW2 and the documents relied on by the management in this regard, it cannot be held that the management has

succeeded in proving charge No.11 against the workman. Therefore it is held that the management has failed to prove the charge No.11 as per the charge sheet.

51. As regards charge No.13 the complainant in this regard namely Shri. Jayakumar, filed the complaint after 4 years from the date of the alleged transaction. While examined as MW3, Shri. Jayakumar has stated that copy of the complaint filed by him is in page Nos.41 and 42 of Ext.M1 document. In that complaint he has not stated anything about the cheque transaction. On going through the evidence tendered by MW3 – Shri. Jayakumar, it can be seen that the allegations in the complaint against the workman cannot be accepted as true and correct. Therefore it is held that the management has failed to prove the misconduct against the workman in this regard.

52. Next aspect is relating to charge No.14 in the memo of charges issued against the workman. As already stated the allegation against the workman by MW3 is proved to be false. Therefore the charge under the head i.e., charge No.14 also will not lie against the workman. It follows that the management failed to prove the charge No.14 alleged against the workman.

53. From the discussions made above it is held that the management has succeeded in proving the first part of memo of charges No.2, 3, 4 and 6 to 10. All the aforesaid charges except charge No.6 are minor misconducts. The point for consideration is answered accordingly.

54. Point No.(ii):- The disciplinary authority imposed the following punishments against the workman. They are:-

- “1. That the CSE be brought down to a lower stage in the scale of pay by two stages, with cumulative effect for charge no.1, charge no.2, charge no.3, charge no.4 and charge no.5 proved.
2. That the next increment due to the CSE be withheld for two years with cumulative effect for charge no.6, charge no.7, charge no.8, charge no.9, charge no.10 and charge no.12 proved.
3. That the CSE be dismissed without notice, for charge no.11, charge no.13, and charge no.14 proved.”

55. While answering point No.(i) it is held that the management failed to prove charge Nos.11, 13 and 14 levelled against the workman. Hence the punishment of dismissal from service as per clause 3 above is not sustainable.

56. As regards charge No.6 it is held that the workman has committed gross misconduct in this regard. The conduct of the workman in this regard requires action and the punishment imposed by the management on this count i.e., - withholding of increment for two years with cumulative effect is only to be sustained.

57. As regards charge No.2 first part and charge Nos.3, 4 and 7 to 10, the maximum punishment that can be awarded under clause 19.8 is stoppage of increment for a period not exceeding six months. The punishment awarded by the disciplinary authority on this aspect is just and reasonable and no interference is called for from this Tribunal. The point is answered accordingly.

58. Point No.(iii):- In view of the findings on point Nos.(i) and (ii) it is held that the action of the management in dismissing the workman w.e.f.15.04.2004 is unjust and illegal. Therefore the order of dismissal with immediate effect, passed by the management against the workman is hereby set aside. The workman shall be reinstated in service on the expiry of one month from the date of publication of the award in the Official Gazette with continuity of service and all other consequential benefits except the payment of back wages. In relation to the charge Nos.3, 4 and 7 to 10 and also the first part of charge No.2 the workman shall be punished with stoppage of increment for a period of six months as per clause 19.8(c) of the 1st Bipartite Settlement. In relation to the charge No.6 the increment due to the workman shall be withheld for two years with cumulative effect as stipulated under clause 21(iv)(d) of the 6th Bipartite Settlement. If the workman has already attained the age of superannuation, the benefits due to him till date of superannuation should be calculated and paid to him. He is also entitled to the pensionary benefits available as per the service conditions. The parties are directed to suffer the cost. The point is answered accordingly.

The award will come into force one month after its publication in the Official Gazette.

Pronounced by me in the Open Court on this the 21st day of April, 2017.

SASIDHARAN K., Presiding Officer

APPENDIX

Witnesses for the workman

WW1	}	29.06.2007	}	12.07.2007	}	14.08.2007	Shri. Ramesan. C.
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Witnesses for the management

MW1	11.07.2006	Shri. T. K. Hari Haran
MW2	19.12.2006	Shri. Shaji. K
MW3	24.01.2007	Shri. S. Jayakumar
MW4	08.03.2007	Smt. Sudhamani. V
MW5	21.03.2007	Shri. B. Prabhakaran Nair
MW6	03.04.2007	Shri. Anilkumar. R.

Exhibits for the workman

W1	-	Carbon copy of page No.18 of enquiry proceedings (Page No.89 of the Register).
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Exhibits for the management

M1	-	Enquiry file.
M2	-	Cheque No.200857 dated 01.01.2003 of The Vysya Bank Ltd., Vazhuthacaud, Thiruvananthapuram for paying cash ₹45,000/- from Savings Bank A/c No.6381.
M2(a)	-	Cheque No.200858 dated 01.01.2003 of The Vyya Bank Ltd., Vazhuthacaud, Thiruvananthapuram for paying cash ₹45,000/- from Savings Bank A/c No.6381.
M3	-	Copy of the complaint letter dated 19.12.2002 submitted by Shri. K. Shaji (MW2) to the Sr. Branch Manager, Kerala University campus branch of the management bank.
M4	-	Cheque returned slip dated 21.01.2003 issued from The Vysya Bank Limited, Vazhuthacaud Jn., Trivandrum against Cheque No.200857 for ₹45,000/- to Shri. Shaji. K.
M4(a)	-	Cheque returned slip dated 21.01.2003 issued from The Vysya Bank Limited, Vazhuthacaud Jn., Trivandrum against Cheque No.200858 for ₹45,000/- to Shri. Shaji. K.

नई दिल्ली, 27 जून, 2017

का.आ. 1566.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फड़रल बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 207/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/76/2015-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1566.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 207/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of Federal Bank Ltd. and their workmen, received by the Central Government on 27.06.2017.

[No. L-12012/76/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 207/2015

Shri Ramesh Singh, S/o Shri Shiv Mandal,
RZ-B-15, Jeewan Park, Uttam Nagar,
New Delhi

...Workman

Versus

The Additional Deputy General Manager,
Federal Bank Ltd.,
1/7 East Patel Nagar, near Metro Pillar No.177,
New Delhi

...Management

AWARD

Ministry of Labour vide letter No.L-12012/76/2015-IR(B-I) dated 10.09.2015 referred a dispute to this Tribunal under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) whereby this Tribunal is required to adjudicate the necessary reference, terms of which are as under:

- ‘Whether the action of management of Federal Bank Ltd. in granting appointment to fresh workmen juniors to Shri Ramesh Singh on regular post of Bankman while shunting out the workman Shri Ramesh Singh is illegal and/or unjustified? If so, to what relief the workman is entitled?’
- 2. Shri Ramesh Kumar, claimant herein filed statement of claim, averring therein that he has been in employment at Dwarka branch of the bank from 01.06.2007 to 19.12.2007, i.e. from 01.06.2007 to 11.06.2007, 22.06.2007 to 30.06.2007, 11.07.2007 to 17.07.2007, 25.07.2007 to 31.07.2007, 08.08.2007 to 14.08.2007, 24.08.2007 to 31.08.2007, 10.09.2007 to 15.09.2007, 24.09.2007 to 29.09.2007, 10.10.2007 to 17.10.2007, 25.10.2007 to 31.10.2007, 08.11.2007 to 15.11.2007, 23.11.2007 to 29.11.2007 and from 11.12.2007 to 19.12.2007. The claimant worked diligently, honestly and laboriously and gave no chance of complaint to the management.
- 3. It is the case of the claimant that vide letter dated 14.11.2012 that he was called for interview and cycling test on 29.11.2012 for regular appointment on the post of bankman. However, later on it was observed that the persons who have never worked earlier and workmen junior to the claimant was given regular appointment and the claimant was not regularized in service despite fulfilling all conditions/requirements, not having committed any misconduct and having performed his duties with utmost sincerity. This action of the management is totally illegal and unjustified. The claimant is unemployed since the date of his termination. A legal notice dated 11.06.2014 was served on the management, to which false allegations were made by the management in its reply. Finally, prayer has been made for his reinstatement in service with full back wages and continuity of service.
- 4. Claim was demurred by the management taking various preliminary objections, inter alia of non-existence of industrial dispute, claim being vague and being barred on the ground of delay & laches etc. On merits, management has admitted the factum of engagement of the claimant as temporary hand at Dwarka branch for short stints due to exigency of work, though the period of engagement stated in his statement of claim is incorrect. The management had conducted regular recruitment process in which the claimant also participated. However, since the claimant was not found fit, he was not selected. Further, the selection process was open to all persons who satisfied the eligibility criteria as to age and educational qualification and not for those who worked earlier only. Finally, it has been prayed that the claim be rejected.
- 5. Rejoinder to the statement of defence of the management was filed by the claimant, in which he has denied the material averments contained therein.
- 6. On pleadings of the parties, following issues were settled by this Tribunal vide order dated 28.09.2016:
 - (i) Whether there does not exist relationship of employer and employee between the claimant and the management bank, as alleged, and as such the reference is not legally tenable?
 - (ii) In terms of reference
 - (iii) Relief
- 7. Thereafter, case was listed for evidence of the claimant. But despite affording of various opportunities, claimant did not put in his appearance. Finally it was stated at the bar by Shri N.K. Mishra, learned A/R for the claimant that Shri Amit Singh, the claimant herein, has settled down in his native village and is no more interested in pursuing the case.
- 8. In view of the above submissions made by the learned A/R for the claimant, the Tribunal is left with no other alternative but to pass a ‘No claim’ award. However, it is made clear that there is no adjudication of the case on merits, as such, claimant is still at liberty to agitate his cause in accordance with law. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : June 2, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 27 जून, 2017

का.आ. 1567.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार फड़रल बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 206/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/78/2015-आईआर (बी-I)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1567.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 206/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of Federal Bank Ltd. and their workmen, received by the Central Government on 27.06.2017.

[No. L-12012/78/2015-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 206/2015

Shri Amit Singh, S/o Shri Man Singh,
RZ-B-15, Jeewan Park,
Uttam Nagar, New Delhi

...Workman

Versus

The Additional Deputy General Manager,
Federal Bank Ltd.,
1/7 East Patel Nagar, near Metro Pillar No.177,
New Delhi

...Management

AWARD

Ministry of Labour vide letter No.L-12012/78/2015-IR(B-I) dated 10.09.2015 referred a dispute to this Tribunal under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) whereby this Tribunal is required to adjudicate the necessary reference, terms of which are as under:

'Whether the action of management of Federal Bank Ltd. in granting appointment to fresh workmen juniors to Shri Amit Singh on regular post of Bankman while shunting out the workman Shri Amit Singh is illegal and/or unjustified? If so, to what relief the workman is entitled?

2. Shri Amit Kumar, claimant herein filed statement of claim, averring therein that he has been in employment at Dwarka branch of the bank from 02.07.2007 to 31.01.2008, i.e. from 02.07.2007 to 10.07.2007, 18.07.2007 to 24.07.2007, 01.08.2007 to 07.08.2007, 16.08.2007 to 23.08.2007, 01.09.2007 to 08.09.2007, 17.09.2007 to 22.09.2007, 01.10.2007 to 09.10.2007, 18.10.2007 to 24.10.2007, 01.11.2007 to 07.11.2007, 16.11.2007 to 22.11.2007, 01.12.2007 to 10.12.2007, 08.01.2008 to 14.01.2008 and from 22.01.2008 to 31.01.2008. The claimant worked diligently, honestly and laboriously and gave no chance of complaint to the management.

3. It is the case of the claimant that vide letter dated 14.11.2012 that he was called for interview and cycling test on 29.11.2012 for regular appointment on the post of bankman. However, later on it was observed that the persons who have never worked earlier and workmen junior to the claimant was given regular appointment and the claimant was not regularized in service despite fulfilling all conditions/requirements, not having committed any misconduct and having performed his duties with utmost sincerity. This action of the management is totally illegal and unjustified. The claimant is unemployed since the date of his termination. A legal notice dated 11.06.2014 was served on the management, to which false allegations were made by the management in its reply. Finally, prayer has been made for his reinstatement in service with full back wages and continuity of service.

4. Claim was demurred by the management taking various preliminary objections, inter alia of non-existence of industrial dispute, claim being vague and being barred on the grounds of delay & laches etc. On merits, management

has admitted the factum of engagement of the claimant as temporary hand at Dwarka branch for short stints due to exigency of work, though the period of engagement stated in his statement of claim is incorrect. The management had conducted regular recruitment process in which the claimant also participated. However, since he was not found fit, he was not selected. Further, the selection process was open to all persons who satisfied the eligibility criteria as to age and educational qualification and not for those who worked earlier only. Finally, it has been prayed that the claim be rejected.

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6. On pleadings of the parties, following issues were settled by this Tribunal vide order dated 28.09.2016:

- (i) Whether there does not exist relationship of employer and employee between the claimant and the management bank, as alleged, and as such the reference is not legally tenable?
- (ii) In terms of reference
- (iii) Relief

7. Thereafter, case was listed for evidence of the claimant. But despite affording of various opportunities, claimant did not put in his appearance. However, finally it was stated at the bar by Shri N.K. Mishra, learned A/R for the claimant that Shri Amit Singh, the claimant herein, has settled down in his native village and is no more interested in pursuing the case.

8. In view of the above submissions made by the learned A/R for the claimant, the Tribunal is left with no other alternative but to pass a 'No claim' award. However, it is made clear that there is no adjudication of the case on merits, as such, claimant is still at liberty to agitate his cause in accordance with law. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : June 2, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 27 जून, 2017

का.आ. 1568.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 20/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/158/1998-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1568.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. ECL and their workmen, received by the Central Government on 08.06.2017.

[No. L-22012/158/1998-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 20 OF 1999

PARTIES :

The management of Khas Kajora Colliery of M/s. ECL

V/s

Sri Sarfuddin Mia

Representatives :

For the Management : Sri P.K. Das, Learned Advocate

For the Union (Workman) : Sri S.K. Pandey, Learned Union Representative

Industry : Coal

State : West Bengal

Dated : 21.03.2017

AWARD

In Exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2 (A) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/158/98-IR(CM-II) dated 22.03.1999 has been pleased to refer the following dispute adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Khas Kajora Colliery of M/s. ECL in not providing dependent employment to the dependent son-in-law of Sh. Sarfuddin Mia, Ex- U.G.Loader is legal and justified? If not, to what relief the workman is entitled?”

1. Having received the Order No. L-22012/158/98-IR(CM-II) dated 22.03.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference Case no 20 of 1999 was registered on 30.03.1999. Accordingly an order to that effect was passed to issue notices through the registered post to parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to parties concerned. Both the parties appeared in the Tribunal, though their representative.

2. The workman Sri Sarfuddin Mia has alleged in his written statement that he was working as Under Ground Loader in Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited with his substantive designation as Under Ground Loader. He was declared medically unfit w.e.f. 07.02.1989 while he was in service of the company. A fake person claimed employment in place of his dependent son and the same was objected by Smt. Jubeda Khatun wife of Sri Sarfuddin Mia. The wife of Sri Sarfuddin Mia also represented that she has not sons but two daughters. She nominated her dependent son-in-law Sri Entaz Mia for employment against the loss of employment of Sri Sarfuddin Mia. At conciliation proceeding employers took the plea that Sri Sarfuddin Mia named the nominee at his own will, so the objection of Smt. Jubeda Khatun can not be considered for employment in letter dated 31.07.1997, Assistant Labour Commissioner (Central), Raniganj. Management also took the plea that since Sri Sarfuddin Mia is alive and his wife does not have any right or authority to nominate any person for employment. The employers did not categorically stated, whether Sri Sarfuddin Mia has nominated any person for employment. Employers are probably taking advantage of illiteracy of Sri Sarfuddin Mia and took his Left Thumb impression in some forms under which Sri Sarfuddin Mia might have shown to have nominated some body as his son. In fact Sri Sarfuddin Mia has no sons and has not signed any paper with the knowledge that he has nominated somebody as his son. ‘Gram Panchayat’ has issued a certificate to effect that Smt. Jubeda Khatun is wife of Sri Sarfuddin Mia and Smt. Munia Khatun and Miss Rashida Khatun are his daughters and also that Sri Entaz Mia alias Sri Imtaz Mia is a dependent son-in-law of Sri Sarfuddin Mia. Sri Sarfuddin Mia for himself as well as his wife Smt. Jubeda Khatun wrote a letter dated 18.12.1992 addressed to the General Manager, clearly nominating his son-in-law Sri Entaz Mia alias Sri Imtaz Mia, son of Sri Aziz Mia for employment. But in spite of said position the employers have not given the said dependent any employment. The nomination of Sri Entaz Mia by Sri Sarfuddin Mia for employment is quite valid and justified. The employer does not have any legal ground for withholding or not proving employment for such a long time. The workman has prayed that Award may be passed declaring that Sri Entaz Mia alias Sri Imtaz Mia, dependent son-in-law of Sri Sarfuddin Mia be provided employment with respective effect.

3. The Agent/Chief Manager, Mining of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited has filed written Statement. He has alleged that Sri Sarfuddin Mia, Ex-Under Ground Loader in Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited was declared medically unfit while in service in the year 1989 as per provision contained in National Coal Wage Agreement-IV. The Ex-workman nominated one person named Sri Darsh Mia by declaring him as his son for providing employment in his favour. As per service record of the concerned ex-workman the name of Sri Darsh Mia was mentioned as his son. On receipt of said application employment proposal was duly processed by the management and in course of proceeding a complaint was received on 04.11.1989 from Smt. Jabida Khatun wife of Sri Sarfuddin Mia that the person nominated by her husband Sri Sarfuddin Mia is a fake person and he is not a member of their family. In receipt of said complaint the employment proposal was stopped by the management of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited for bona fide reason. As the person nominated by the workman was a fake person so the proposal for employment was turned down by the management and there is no scope of entertaining any further claim for employment in favour of dependent son-in-law of Sri Sarfuddin Mia. Since Sri Sarfuddin Mia is alive his wife does not have any claim or

authority to nominate any person for employment. It is incorrect that Sri Sarfuddin Mia has never nominated any person for employment in his place. It is incorrect that management has taken any advantage of the illiteracy of the concerned workman and took his Left Thumb Impression in some form for nomination of any person as son of Sri Sarfuddin Mia. Once the nomination is made for employment on medical ground the nomination becomes final and the workman can not alter his proposal by adopting any further choice as per his suitable. Management had or has no legal obligation to entertain such baseless demand of proving employment to alleges son-in-law of Sri Sarfuddin Mia. The action of management is justified. The agent of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited has prayed that the Tribunal may kindly hold the action of management is totally justified in not providing employment to dependent son-in-law of the ex-workman Sri Sarfuddin Mia and the concerned workman is not entitled to any relief.

4. Workman has filed certificate of 'Panchayat Sachiv' as well as 'Anchal Adhikaari'. Workman Sri Sarfuddin Mia has filled his own affidavit and affidavit of Sri Ismail Mia in his oral evidence. Sri Sarfuddin Mia and Sri Ismail Mia are cross-examined by the learned advocate of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited. The Agent of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields limited has not filed any documentary or oral evidence.

5. I have heard Sri S. K. Pandey, learned union representative appearing on behalf of the workman Sri Sarfuddin Mia and Sri P. K. Das, learned advocate appearing on behalf of the management of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited.

6. Sri P. K. Das, learned advocate on behalf of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited has argued that claimant could not prove that he is son-in-law of Sri Sarfuddin Mia. Since claim of Sri Sarfuddin Mia was not bona fide the management of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited has rejected the employment proposal of Sri Sarfuddin Mia. On the other hand Sri S. K. Pandey, learned union representative on behalf of the workman Sri Sarfuddin Mia has argued that there is no son of Sri Sarfuddin Mia and his wife Smt. Jubeda Khatun. They have only two daughters. Sri Entaz Mia alias Sri Imtaz Mia is the husband of elder daughter of Sri Sarfuddin Mia and he is dependent on his father-in-law, Sri Sarfuddin Mia. So he is entitled for job.

7. It is admitted fact that Sri Sarfuddin Mia is Ex-Under Ground Loader in Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited. It is also admitted fact by both the parties that he was declared medically unfit in the year 1989 by the Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields limited during service period. National Coal Wage Agreement-IV is a joint bi-partite agreement between the management and the union. Rule 9.4.3 provides under:-

"Employment to one dependant of a worker who is permanently disabled in his place : The dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, younger brother, widowed daughter / widowed daughter-in-law with residing the employee and almost wholly dependant on the earnings of the employees may be considered."

8. PW-1, Sri Sarfuddin Mia has stated in his affidavit that he is an illiterate person. He worked at Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited as Under Ground Loader till his service was taken away on medical ground. He is married to Smt. Jubeda Khatun. Out of this wedlock he has 2 (Two) daughters. Sri Entaz Mia alias Sri Imtaz Mia, the husband of his elder daughter Smt. Munia Khatun is his dependent son-in-law. He has nominated Sri Entaz Mia alias Sri Imtaz Mia for employment. He has not nominated anybody except his son-in-law for employment. He was cross-examined at length by the learned advocate of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited. Even in his cross-examination he has supported his allegation stated in his affidavit. There is no reason to disbelieve the statement made on oath by Sri Sarfuddin Mia. Another witness examined on behalf of workman Sri Ismail Mia son of Sri Bhagwati Mia. Sri Ismail Mia has stated that he was an employee of No. 2 Madhabpur Colliery of M/s. Eastern Coalfields Limited. He is an illiterate person he is acquainted with Sri Sarfuddin Mia and his wife Smt. Jubeda Khatun. The elder daughter of Sri Sarfuddin Mia and Smt. Jubeda Khatun has been staying with her husband in the residence of Sri Sarfuddin Mia as his dependent. Sri Ismail Mia has been cross-examined by the learned advocate of the Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited. 'Panchayat Sachiv' as well as 'Anchal Adhikaari' of Karmatand has issued certificate to the effect that Sri Entaz Mia alias Sri Imtaz Mia is son-in-law of Sri Sarfuddin Mia.

9. The allegation of the Agent of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited that Sri Sarfuddin Mia nominated his son namely Sri Darsh Mia for employment is as per service record of Sri Sarfuddin Mia. But Sri Sarfuddin Mia has categorically denied this fact in his evidence stated on oath. It is relevant to mention that service record is maintained by the employer. If in fact Sri Sarfuddin Mia, the ex-workman has nominated any other person for employment as son namely Sri Darsh Mia and this fact is entered in service record it necessarily ought to have been filed by the Agent of Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited. This could have been the best evidence to refute the allegation of Sri Safuddin Mia the ex-workman. As per Section 106 of Evidence Act the burden to prove face is upon the person who alleges the fact. The burden of proof that Sri Sarfuddin Mia

nominated any other person was upon the Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited. No documentary evidence or even oral evidence has been filed by Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited to refute the allegation of Sri Sarfuddin Mia. The copy of service record has not been filed. The Hon'ble Apex Court in **Gopal Krishnaji Ketkar V/S Mohd. Haji latif and others, AIR 1968 SC 1413** has held that :-

“Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof.”

In view of above discussion the action management of Khas Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited in not providing employment to the dependent son-in-law of Sri Sarfuddin Mia, Ex-Under Ground Loader is illegal and unjustified. The dependent son-in-law of Sri Sarfuddin Mia namely Sri Entaz Mia alias Sri Imtaz Mia is entitled for employment.

ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 27 जून, 2017

का.आ. 1569.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, अर्नाकुलम के पंचाट (संदर्भ सं. 15/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-22011/50/2012-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1569.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of M/s. FCI and their workmen, received by the Central Government on 08.06.2017.

[No. L-22011/50/2012-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Thursday the 27th day of April, 2017/07th Vaisakha, 1939)

ID 15/2013

Union

:

The Secretary,
Kerala State FCI Workers Association,
West Hill Unit, Kozhikkode,
Ramyam,
Post Edakkad,
Calicut – 673 005.
CALICUT –

By Adv. Shri. U. K. Devidas

Management : The General Manager,
 Regional Office,
 Food Corporation of India
 Trivandrum

By Adv. Shri. Renil Anto Kandamkulathy

This case coming up for final hearing on 21.04.2017 and this Tribunal-cum-Labour Court on 27.04.2017 passed the following :

AWARD

This is a reference under clause under Section 10(1)(d) and (2A) of of the Industrial Disputes Act, 1947 (Act 14 of 1947) for adjudication.

2. The dispute referred for adjudication is:

'Whether the action of the management of FCI in terminating the services of 47 labourers (list enclosed) engaged by them is correct? If not, to what relief they are entitled?'

3. After receipt of the reference Order No.L-22011/50/2012-IR(CM-II) dated 14.02.2013 issued by the Ministry of Labour, Government of India, summons was issued to the parties to appear, submit pleadings and produce documents to substantiate their respective contentions. On receipt of the summons the parties entered appearance through counsel and submitted their pleadings.

4. The contentions in the claim statement filed by the union in brief are as follows:-

All the 47 employees as per the list annexed were directly employed under the management – Food Corporation of India for a minimum service period of 24 years to the maximum service period of 40 years. The godown at West Hill, Kozhikode was started in the year 1964. Most of the workers were employed there from the year 1970. All the 47 workers are permanent employees and they are employed in connection with the business carried on by the management.

5. The management introduced direct payment system in almost all the depots across the country except few depots such as West Hill depot, Kozhikode. In O. P. Nos.14388/1999 dated 05.10.1999; 2251/01 dated 16.07.2002 and 10879/03 dated 22.08.2003 before the Hon'ble High Court of Kerala, Ernakulam the management submitted undertaking to the effect that they are going to introduce direct payment system in West Hill depot also. Even after submitting the undertaking, the management prolonged the implementation of the same for one reason or other. All the workmen employed in the godown of the management are covered under the Employees' Provident Funds & Miscellaneous Provisions Act and other allied enactments. Even though the benefits under the ESI Act was extended to the workmen for some time, in view of the subsequent Government order that coverage was exempted.

6. On 01.12.2011 the Area Manager of the management informed a few workers employed in the godown that their services are not required from that date. The same procedure was adopted in relation to the remaining workmen on 14.12.2011. The oral termination of the services of the workmen by the management is illegal, unjust and not sustainable. Even though the workmen submitted a complaint against the illegal action of the management it was informed that the termination is as per the policy 'no work no pay'. The management also informed that the workers so terminated are employees under the contractor. The said statement by the management is not true to facts.

7. Therefore the union has requested to pass an award to the effect that all the 47 workers as per the list annexed are employees under the management and that their termination is illegal and that they are entitled to all terminal benefits as per law.

8. The contention in the written statement filed by the management in brief are as follows:-

The management has denied all the averments in the claim statement filed by the union except those that are specifically admitted. The Food Corporation of India is a Central Public Sector Undertaking established under the Food Corporation of India Act, 1964, for the purpose of procurement, storage and distribution of food grains across the country. Food Corporation of India had constructed godowns at several places throughout the country. From the beginning of depots in Kerala region, the Handling & Transport (H&T) contracts were awarded to private contractors. Subsequently the H & T contracts were awarded to Labour Contract Societies, subject to feasibility, in preference to individual contractors.

9. During the year 1991-1992 sixteen depots in Kerala were notified under the Contract Labour (Regulation & Abolition) Act, 1970. The West Hill depot at Calicut was not included in that notification. Notification in respect of that depot was published on 12.11.2001. As per letter No.19011/26/2009/FC.3 dated 05.07.2011 the Government of India has approved the introduction of No-Work-No-Pay (NWNP) system in this depot.

10. The Secretary, FCI Workers' Union (INTUC), West Hill unit had filed WP(C) No.7651/2004 before the Hon'ble High Court of Kerala for a declaration and ancillary reliefs. During the pendency of that Writ Petition the Government of India has conveyed the introduction of No-Work-No-Pay system in the West Hill depot. Thereafter that Writ Petition was dismissed as not pressed. Subsequently the management introduced No-Work-No-Pay system in the West Hill depot w.e.f.01.12.2011.

11. Prior to the introduction of No-Work-No-Pay system the handling work was carried out by the labour contract society. Later the labour contract society dropped the contract awarded due to labour strike. The strike continued for three months. In the mean time a three member committee was constituted to resume Public Distribution System issues. The said committee was handling the works from 20.04.2011 to 30.11.2011. The said committee will draw amount from the management and disburse it to the labourers. Subsequently No-Work-No-Pay system was introduced w.e.f.01.12.2011. As per the guidelines prescribed for the implementation of No-Work-No-Pay Scheme, some workers were not qualified due to the following two main reasons:-

- (1) *Those who have already completed and crossed the age of 60 years as on the date of induction under NWNP system.*
- (2) *Those who not have a minimum attendance of continuous 9 months in the preceding 3 years as contract labourer in the Depot.”*

12. The management has denied the contention of the union that the 47 employees as per the list were directly employed by them. The contention of the union that the management has filed an undertaking before the Hon'ble High Court that they are going to introduce Direct Payment System at Calicut depot is denied by the management. The contention of the union that the workers were treated as employees of the management is also denied by them. The Food Corporation of India has paid the handling charges only to the contractors and not to the labourers. They ensured the remittance of EPF/ESI etc. as the principal employer. The action of the management to abolish contract labour in the depot at West Hill and introduction of No Work No Pay were in accordance with the relevant rules and regulations. The management has requested to disallow the claim of the union and pass an award accordingly.

13. After filing written statement by the management, the union filed rejoinder reiterating the contentions in the claim statement.

14. After affording sufficient opportunity to both sides to take steps and for production of documents, the matter was posted for evidence. On behalf of the union WW1 was examined and Ext.W1 is the document marked. On behalf of the management no oral evidence has been adduced and no documents were marked.

15. The points arising for consideration are:-

- (i) **Whether the 47 employees as per the list annexed to the reference order are employed directly by the management?**
- (ii) **Whether the 47 employees as per the list are entitled to the benefits as allowable to the permanent employees under the management?**
- (iii) **Whether the management of FCI had terminated the service of 47 labourers as per the list? If so, whether the said action is just and proper?**
- (iv) **Reliefs and costs.”**

16. Point Nos.(i) to (iii):- The dispute referred for adjudication before this Tribunal is:-

'Whether the action of the management of FCI in terminating the services of 47 labourers (list enclosed) engaged by them is correct? If not, to what relief they are entitled?'

The union involved in this reference has espoused the cause of the workmen. According to the union all the 47 employees as per the list annexed were directly employed under the management – Food Corporation of India. It is stated that the workmen had a minimum service period of 24 years to the maximum service period of 40 years. It is also stated that all the 47 workers were permanent employees and they are employed in connection with the business carried on by the management.

17. The Food Corporation of India is a Central Public Sector undertaking established in accordance with the provisions of the Food Corporation of India Act, 1964. The main object of establishing the public sector unit was for the purpose of procurement, storage and distribution of food grains across the country. Food Corporation of India had

constructed godowns at several places in the country. Among other places the Food Corporation of India is having a godown at West Hill in Calicut.

18. The dispute in this reference is relating to the employees at the West Hill, Calicut depot. The union has stated that on 01.12.2011 the Area Manager of the management informed a few workers in the godown at West Hill depot that their services were not required from that date. It is stated that the management adopted the same procedure in relation to all the remaining workmen on 14.12.2011. According to the union, the oral termination of the services of the workmen by the management is illegal, unjust and hence not sustainable. It is stated that even though the workmen submitted a complaint against the illegal action by the management it was informed that the termination was as per the policy 'No-Work-No-Pay'. It is also stated that the management informed the workmen that they are not employed under them but employed under the contractor.

19. The contention of the management is that they introduced No-Work-No-Pay system in the West Hill depot w.e.f.01.12.2011. It is stated that prior to the introduction of No-Work-No-Pay system, the handling and transportation (H&T) work in the godown was carried out by the Labour Contract Societies. Subsequently the society dropped the contract awarded due to labour strike. It affected the distribution of essential food materials. There was discussion relating to that issue and a three member committee was constituted to resume Public Distribution System. It is stated that the said committee was handling the works from 20.04.2011 to 30.11.2011. It is stated that the said committee will draw amount from the management and they will distribute the same among the workmen depending on the volume of work done by each of them. It is stated that as per the guidelines prescribed for implementation of No-Work-No-Pay scheme, some workers were not qualified due to the following reasons:-

- (1) *Those who have already completed and crossed the age of 60 years as on the date of induction under NWNP system; and*
- (2) *Those who not have a minimum attendance of continuous 9 months in the preceding 3 years as contract labourer in the Depot.”*

20. As per the list produced by the workmen all the 47 workmen have exceeded the age of 60 years as on the date of introduction of No-Work-No-Pay system. Ext.W1 is the letter issued by the Area Manager of the management to the Secretary of the union. Along with Ext.W1, the management enclosed a copy of the instructions issued by the headquarters containing the guidelines for implementation of No-Work-No-Pay system. As per clause(iii) in the guidelines annexed to Ext.W1 document it is stated that the Corporation will resort to direct payment on 'No-Work-No-Pay' basis through a committee consisting of 2-3 labour representatives nominated by the workers concerned who will be inducted under this system based on the work done by them.

21. In clear and categoric terms the management has stated that the workmen involved in this reference were not employed by them. It is also stated that prior to the introduction of the No Work No Pay system the workmen were employed under the contractors initially and later under a three member committee constituted to resume Public Distribution System.

22. While examined as WW1, the Secretary of the union has stated that the FCI has not issued any order of appointment to them. He has stated that his service conditions were fixed and his wages were paid by the contractor. He has further stated that in the West Hill depot the society was ensuring the conduct of work by the workers. He has stated that he was a member of the society. WW1 has stated that the Food Corporation of India used to pay the amount to the society which in turn pay it to the workers. He has stated that while he was employed, his wages were paid by the society.

23. Even though the workmen have stated that they were employed directly by the management – Food Corporation of India, there is no acceptable evidence to substantiate the same. The evidence tendered by WW1 probabilises the fact that the workmen were paid wages by the contractor initially and later it was paid through the society. There is nothing on record to prove that the workmen involved in this reference i.e., 47 persons were employed directly by the management. In such circumstance the union is not entitled to the relief as per the claim statement filed in this case. Therefore the points for consideration are answered against the union and in favour of the management.

24. Point No.(iv):- In view of the findings on Point Nos.(i) to (iii) the union is not entitled to the relief claimed as per the claim statement. The point is answered accordingly.

25. In the result an award is passed holding that the union is not entitled to any relief as per this reference. No costs.

The award will come into force one month after its publication in the Official Gazette.

Pronounced by me in the Open Court on this the 27th day of April, 2017.

SASIDHARAN K., Presiding Officer

APPENDIX**Witness for the union**

WW1 23.04.2015 Shri. K. C. Sankara Narayanan

Witnesses for the management

NIL

Exhibit for the union

W1 - Letter No.S&C.13(3)NWNP/2011/Vol.II dated 13.12.2011 issued by the Area Manager, Food Corporation of India, District Office, Kozhikode to Shri. K. C. Sankara Narayanan, Secretary, FCI Workers' Association, CITU, West Hill.

Exhibit for the management

NIL

The particulars relating to the name, designation, length of service, provident fund number etc. of the employees who were terminated from the service on 1.12.2011 and on 14.12.2011 are as followos:

Sl. No.	Name	Designation	Service	EPF No.
1	K V Madhaca Kurup	Head Load Worker	1972-2011 (40 yrs)	3602/11
2	K P Mohammed	Head Load Worker	1972-2011 (40 yrs)	3602/12
3	P Vasu	Head Load Worker	1972-2011 (40 yrs)	3602/20
4	K Koyamon	Head Load Worker	1972-2011 (40 yrs)	3602/42
5	M A Sreedharan	Head Load Worker	1972-2011 (40 yrs)	3602/95
6	V P Abdulla	Head Load Worker	1972-2011 (40 yrs)	3602/99
7	T V Haridasan	Head Load Worker	1976-2011 (36 yrs)	3602/176
8	V P Mammed Koya	Head Load Worker	1972-2011 (40 yrs)	3602/276
9	K Sivasankaran Nair	Head Load Worker	1977-2011 (35 yrs)	3602/318
10	C P Mohammed	Head Load Worker	1972-2011 (40 yrs)	3602/320
11	K Sankaran	Head Load Worker	1972-2011 (40 yrs)	3602/322
12	P Sreedharan Makkada	Head Load Worker	1972-2011 (40 yrs)	3602/335
13	K Koyakutty	Head Load Worker	1972-2011 (40 yrs)	3602/385
14	I V Ravindran	Head Load Worker	1978-2011 (33 yrs)	3602/403
15	K P Chinnakutten	Head Load Worker	1981-2011 (30 yrs)	3602/481
16	V Abdu Rahiman	Head Load Worker	1984-2011 (28 yrs)	3602/527
17	C P Surendran	Ancillary Worker	1972-2011 (40 yrs)	3602/112
18	P Usman	Ancillary Worker	1972-2011 (40 yrs)	3602/113
19	T Asokan	Ancillary Worker	1972-2011 (40 yrs)	3602/115
20	P P Mamukoya	Ancillary Worker	1972-2011 (40 yrs)	3602/117
21	T Subramanjan	Ancillary Worker	1972-2011 (40 yrs)	3602/119
22	P Ravindhran	Ancillary Worker	1972-2011 (40 yrs)	3602/130
23	P Aubaker	Ancillary Worker	1975-2011 (37 yrs)	3602/131
24	K C Sankaranarayan	Ancillary Worker	1972-2011 (40 yrs)	3602/132
25	K V Bichu	Ancillary Worker	1972-2011 (40 yrs)	3602/274
26	P Balakrishna	Ancillary Worker	1976-2011 (35 yrs)	3602/308

27	P V Balan	Ancillary Worker	1977-2011 (35 yrs)	3602/364
28	P Ravidhran	Ancillary Worker	1977-2011 (34 yrs)	3602/365
29	C Viswanadhan	Ancillary Worker	1978-2011 (33 yrs)	3602/390
30	P Bhaskaran	Ancillary Worker	1978-2011 (33 yrs)	3602/393
31	P Prakashan	Ancillary Worker	1981-2011 (30 yrs)	3602/461
32	P T Krishnankutty	Ancillary Worker	1981-2011 (30 yrs)	3602/475
33	N K Chinnan	Ancillary Worker	1987-2011 (24 yrs)	3602/708
34	K Lakshmi	Ancillary Worker	1972-2011 (40 yrs)	3602/168
35	P Devi	Ancillary Worker	1972-2011 (40 yrs)	3602/299
36	P P Kamalashmi	Ancillary Worker	1976-2011 (35 yrs)	3602/330
37	M Dhakshayani	Ancillary Worker	1977-2011 (34 yrs)	3602/343
38	T Prema	Ancillary Worker	1977-2011 (34 yrs)	3602/345
39	P Santha	Ancillary Worker	1977-2011 (34 yrs)	3602/346
40	C Pushpa	Ancillary Worker	1977-2011 (34 yrs)	3602/377
41	K Prema	Ancillary Worker	1980-2011 (32 yrs)	3602/433
42	K Radha	Ancillary Worker	1980-2011 (32 yrs)	3602/438
43	P Rajalakshmi	Ancillary Worker	1983-2011 (29 yrs)	3602/510
44	P T Narayani	Ancillary Worker	1983-2011 (29 yrs)	3602/521
45	P M Leela	Ancillary Worker	1985-2011 (27 yrs)	3602/547
46	I P Radha	Ancillary Worker	1988-2011 (24 yrs)	3602/784
47	P Balan	Ancillary Worker	1972-2011 (40 yrs)	3602/116

Sd/-

Secretary

Kerala State F.C.I. Workers Association

नई दिल्ली, 27 जून, 2017

का.आ. 1570.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीपीडब्ल्यूडी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ सं. 73/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05. 06.2017 को प्राप्त हुआ था।

[सं. एल-42012/94/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1570.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 73/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the Industrial Dispute between the management of M/s. CPWD and their workmen, received by the Central Government on 05.06.2017.

[No. L-42012/94/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI****ID No.73/2011**

Shri Raghbir, Labour (work order)
 C/o All India CPWD (MRM) Karamchari Sangathan (Regd.),
 4823, Balbir Nagar Extension,
 Gali No.13, Shahdara,
 Delhi – 110 032

...Workmen

Versus

The Director General,
 Central Public Works Department,
 I.P. Bhawan,
 New Delhi

...Management

AWARD

A reference was received from Ministry of Labour and Employment vide Order No.L-42012/94/2005(CM-II) dated 12.06.2006 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) by Central Government Industrial Tribunal cum Labour Court No.II, New Delhi, for adjudication of an industrial dispute, terms of which are as under:

'Whether the action of the management of CPWD in not regularizing the services of Shri Raghbir engaged on work order basis is legal and justified? If not, to what relief the workman is entitled to and from which date?'

2. It is clear from the statement of claim filed by the claimant that he was engaged on work order basis for cleaning water storage tanks at surface area, roofs and courtyards under Sub-Division II at Shah Jehan Road with effect from 12.01.1999. Payment of wages was being done through cheque, as is clear from cheque No.246802 dated 11.05.1989 Annexure I. Work performed by the claimant herein comes within the ambit and scope of work carried out by sweeper/beldar in the establishment of CPWD who are getting regular pay and allowances for the same. However, claimant was being paid wages as per square feet surface area. The claimant has put in more than 240 days of continuous service to the satisfaction of the management. Claimant demanded similar pay and allowances which was being paid to his regular counterparts by the management. Thereafter, his services were wrongly retrenched on 28.01.2004 in spite of the fact that his case was pending before the Regional Labour Commissioner for redressal of his grievance. Action of the management has been alleged to be highly arbitrary and against law. Finally, prayer has been made for reinstatement/regularization of services of the claimant herein.

3. Claim was resisted by the management who filed reply (counter statement) thereto. It has been alleged that the management is an agency of the Central Government operating throughout the country. In the present case, management has been given charge of maintaining office and residential building of Central Government. Normally, malba is generated on the roof and open areas which is required to be cleaned on regular basis for effective maintenance of buildings and premises and the same is to be disposed of to the approved dumping yard of MCD. The work was being executed through private contractors as and when need arose. The agreement/work orders are drawn only for particular periods as and when requirement arises and not on regular basis. In the present case, it has been alleged that work was being given to the claimant for the designated work of cleaning open area/water storage tank and disposal of malba etc. The above work order is for a particular period and can be cancelled by the Engineer Incharge at any point of time. Management has denied the other averments made in the statement of claim and alleged that the claimant is not entitled for regularization in service. Claimant was never engaged as sweeper by the management , as such, question of vacant post in the department did not arise.

4. Claimant filed rejoinder to the written statement filed by the management, reasserting the stand taken in the statement of claim. Management has made contrary statements in the reply, on the one hand saying that the claimant was engaged on contract basis as and when need arose to clean malba and on the other band it is stated for removal of malba, labour is engaged on regular basis, which shows that the claimant was engaged on regular basis from 12.01.1989.

5. No specific issues were framed by my learned predecessor in the present case as is clear from record.

6. The case was transferred to this Tribunal by the appropriate Government vide order No.Z-22019/6/2007-IR(C-II) dated 30.03.2010 .

7. Claimant, in support of his case, examined himself as WW1. Management, in order to rebut the case of the claimant examined Shri Anand Kamal Pandey as MW1 and Shri Manoj Kumar as MW2.

8. I have heard Shri Satish Kumar Sharma, A/R for the claimant and Shri Sanjay Kumar Aggarwal, A/R for the management.

9. It is clear from the affidavit of the claimant that it is on the same lines as the averments contained in the statement of claim.

10. It is the case of the management that the claimant Shri Raghbir was given designated work of cleaning of open area, water storage tanks, removal of malba etc. for a specific period. Management has been given the charge of maintenance of office and residential building of the Central Government. Malba which is generated on the roof and open area is to be cleaned on regular basis for effective maintenance of such building and premises. The management is required to dispose of the malba in the dumping yard of MCD. This work is executed through private contractors as and when the need arises. For this, quotation/tenders from interested parties and invited and the contractor who has given the least quotation/tender, after scrutiny is allotted the work. As per stand of the management , this work was allotted to the claimant, whose rates were found to be the lowest. Stand of the management is that he was never in the employment of the management, as such no specific order of termination/retrenchment was passed against the claimant.

11. Learned A/R for the claimant strongly urged that in the present case there is ample evidence on record to suggest that the claimant was doing the work of sweeping and cleaning of malba from rooftops as well as premises belonging to the management on regular basis and he was being paid salary through cheques as is clear from record of the management. In this regard, attention of the court was also invited to the documents of the management Ex.MW2/W3 which shows that during the years 1989, the claimant has performed work and payment of Rs.1200.00 was also made to the claimant. Even thereafter, in the year 1990 and 1991 there is mention of the claimant as well as receipt of payment for the said work. There is also mention that payment is being made for cleaning rooftop etc. All these documents, including extract of supply/work order register, were filed by the management. An Application was moved by the claimant for production of the same. At this stage, it is also appropriate to refer to the statements of Shri Anand Kamal Pandey MW1 as well as Shri Manoj Kumar, MW2. Shri Anand Kamal Pandey has clearly admitted that the management issued order 27.11.2001 for abolition of contract labour system in the establishment. He has also admitted that there were instructions of Director General(Works) CPWD vide order dated 25.08.2002 for engaging contractor/worker on order for the aforesaid work. In fact, spot quotation was called and quotation of the claimant was found to be the lowest. The department has not admittedly filed copy of such quotation which were invited for the aforesaid work though opportunity was given to the management to file the same. This question was specifically put to the witness during his cross-examination regarding allotment of work year-wise from 1989 to 2004 and was also given time to produce relevant record as well as vacancy position of such posts in the department. However, witness could not produce the record year-wise so as to exactly determine the work allotted to the claimant herein during the aforesaid period. He has even made reference to the vacant post for 31.03.2000. Regarding vacancy position, he has referred to Ex.MW1/W1. However, he has admitted that record pertaining to the said quotation could not be produced as the same was not traceable. He has further deposed that on work order register, signatures of the contractor of the workmen are not obtained. In work order, signature of the contractor are obtained. However, Ex.MW1/W2 and Ex.MW1/W3 do not bear signature of the claimant herein, which is totally against the statement made by this witness. Similarly, statement of MW2 Shri Manoj Kumar, whose affidavit is Ex.WW2/A is not of much help so as to prove that the work given to the claimant herein was not of regular nature or he was not doing the said work continuously since 1989 till the date of his termination. He has also admitted that copy of work order has been placed on record and record pertaining to quotation of the claimant herein is also not available with the management. This witness was specifically put a question that no quotation was invited at any point of time for awarding of work to the claimant and witness was given time to answer this question after verification of record. However, when witness again appeared on 28.06.2012, he deposed that he has gone through the record relating to quotation for award of work to the claimant and the same was not available with the management. Accordingly, he was not in a position either to affirm or deny whether any quotation was invited at any point of time for award of the aforesaid work. He further admitted that whenever quotations are invited for such like work, atleast three quotations are invited. His cross-examination was further deferred so as to produce certificates from the Assistant Engineer who worded work orders to the claimant. It was thereafter that this witness has produced work order Ex.MW2/W1. No doubt, in Ex.MW2/W2 there is mention of calling of quotation. However, record pertaining to quotations has admittedly not been produced by the management though quotation register is maintained. He has further admitted that on the quotation register, signatures of the tenderers are obtained. All this goes to show that the management was actually concealing something from this Tribunal so as to harm the case of the claimant. As per the stand taken by the management, payment were made by cheque and there is mention of such payments in the supply/work order register, Ex.MW2/3, Ex.MW2/4 and Ex.MW2/5.

12. Now, the vital question before this Tribunal is whether services of the claimant herein were availed by the management only for a specific work for a specific period. As discussed above, there is no cogent or reliable evidence so as to prove for what time period and for which purpose such work was allowed to the claimant herein from the year 1989 onwards. Admittedly as per the stand taken by the management in the written statement, the said work is of regular nature and maintenance of cleanliness of rooftop and premises is regularly required. At this juncture, it is also appropriate to refer to the notification issued by the Government of India under Section 10 Annexure A. During the course of arguments, issuance of this notification was not disputed by the learned authorized representatives for the respective parties. It is clear from perusal of Annexure 3 that vide notification 31.07.2002 issued under section 10(2) of the CLRA Act, 1970, specific prohibition of employment of contract labour in the following categories were made:

- (i) Air Conditioner Mechanic
- (ii) Air Conditioner Operator
- (iii) Air Conditioner Khalasi/Helper
- (iv) Electrician
- (v) Wiremen
- (vi) Khalasi(Electrical)
- (vii) Carpenter
- (viii) Mason
- (ix) Fitter
- (x) Plumber
- (xi) Helper/Beldar
- (xii) Mechanic
- (xiii) Sewerman
- (xiv) Sweeper
- (xv) Foreman

13. After issuance of the said notification, the workmen were covered under the employment as referred in the above notification and are to be treated as direct employees of the management of CPWD and their status is that of the daily rated workers directly in the management of CPWD. Workers are performing duties, which is of permanent nature, as such, they cannot be treated as contract labour.

14. It is further clear that item No.(xi) and (xiv) pertain to the work of helper/beldar and sweeper respectively. Thus, after issuance of the above notification, management was even otherwise prohibited from engaging any contract labour or allot any work by inviting tender/quotation for the purpose of the job of helper/beldar/sweeper. Thus, the stand of the management that such designated work can still be allotted for specific purpose for a specific period is contrary to the issuance of notification dated 31.07.2002.

15. Before I proceed further to consider and evaluate the evidence on record, it is necessary to refer to the definition of 'retrenchment' as contained in Section 2(oo) and the same is as under:

1*[(oo) "retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

2*[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;

16. Equally important is the definition of 'workman' as contained in section 2(s) of the Act. During the course of arguments, it was not denied that the workman herein falls within definition of 'workman' as defined in section 2(s) of the Act inasmuch as even a daily wager, casual worker or a temporary worker are also included in the definition of 'workman' contained in the Act.

17. It is clear from definition of the word ‘retrenchment’ under sub-clause (bb) of section 2(oo), termination of services of a workman as a result of non-renewal of contract of employment on the expiry of contract would not fall within definition of ‘retrenchment’. Hon’ble Apex Court in the case of Steel Authority of India & others vs. National Union Waterfront Workers & Others (2001(7) SCC 1) wherein the proposition of law regarding contract labor has been finally settled and the same is as under:

125 (5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.”

18. Hon’ble Apex Court in the case of ONGC Employees Mazdoor Sabha Union vs ONGC decided on 26.04.2013 wherein it was a case where fate of more than 577 workmen was involved who were initially given fixed tenure appointment. Industrial Tribunal had decided that termination of their job was untenable in law and Corporation was directed to give regular appointment to such term based employees. Tribunal also decided vide award dated 08.11.2011 not to make recruitment from open market by inviting fresh applications for such regular posts. Management has taken the matter in appeal before the Hon’ble High Court and urged vehemently that appointment of the workmen in that case was tenure based and for specific purpose. Moreover, the Tribunal cannot give directions for regularization of the workmen when applications have been invited from the open market for recruitment. Reliance was also placed on behalf of the management upon the case of Uma Devi case (supra) in which it has been clearly laid down that no back door entry can be made by the Corporation or State in disregard to the statutory principles. Appointment to posts is to be made by all the organs of the State, including the Corporation after issuing advertisement in the prescribed manner and also invited applications from Employment Exchange where eligible candidates get their names registered. Hon’ble High Court after considering comparative merits of the contentions as well as case law relied upon by the respective parties, rejected contention of the management that the workmen in the said case were purely holding tenure appointments. It was also noticed by the Hon’ble High Court that no regular recruitments are being made by ONGC since 1987 to 2004 and almost 30% of the labour force stands reduced, either due to superannuation or retirement on voluntary basis. Therefore, Corporation started managing its affairs by deploying contract labour or engaging employees on tenure basis. Strong reliance was also placed by High Court in the case of Mineral Exploration Corporation Employees Union vs. Mineral Exploration Corporation Ltd. (AIR 2006 SCW 3865) wherein Hon’ble Apex Court had occasion to consider meaning of the term ‘temporary worker’ and ‘casual worker’. Hon’ble Apex Court also dealt with the question of contract employee or tenure appointments. Finally, it was held that the employees engaged and continued for years together by the Corporation cannot be termed as temporary or casual for the reason that they were given appointment for a specific period, particularly when the work which such employees are doing is of regular or perennial in nature. It was the usual practice of the Corporation to engage workers for long duration of time without affording them appointment. In the case in hand also, workmen herein is doing work which is of regular and perennial in nature and recruitment of the workman admittedly been done in accordance with regulations by inviting application, holding test/interview. Appointment of the workman herein is not at all a back door entry, as such ratio of Uma Devi case is not attracted to the case in hand, which specifically deals with irregular and illegal appointments. Hon’ble High Court has thus upheld award of the Tribunal by observing that term based appointees were admittedly given extension from time to time and were doing similar job which other regular appointees were doing. Above act of the Corporation was termed to be unfair labour practice and was strongly deprecated by the High Court.

19. Yet in another case Hon’ble High Court of Delhi in Officer Incharge, Defence Standardization Cell Vs. Mukesh Kumar (2013 Lab.IC 3329) dealt with the same question. In the said case, the workman was engaged as a sweeper with the management. His appointment was on monthly basis and from time to time successive extension was given to him

by the management for a period of three years. He was also not given benefits to which he was entitled under the law vis-à-vis regular workman. It was claim of the workman that juniors to him were continued in employment and later on fresh hands were employed subsequent to his termination. No charge sheet was issued nor any enquiry was held against the workman before ordering his termination. Tribunal passed an award in favour of the workman holding that practice of giving renewal every month or after sometime amounts to unfair labour practice, as such management has flouted provisions of section 25(F) read with Item 10 of the Act. Management took the matter in appeal before the Hon'ble High Court by filing writ petition. Main contention of the management was that the workman was employed on contract period for the purpose of conservancy and his employment was on the basis of agreement which was renewed every month. This being the position, it was strongly urged that case of the workman falls under section 2(oo)(bb) of the Act and termination of his services does not amount to retrenchment within the meaning of section 2(oo) of the Act as the same is in accordance with the terms of agreement. Therefore, in the submission of the management, workman is not entitled to benefit of section 25F has held by the Tribunal. Hon'ble High Court after discussing ratio of the case in State of Karnataka vs. Uma Devi (AIR 2006 SC 1806) and also putting reliance upon the case of Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board (AIR 2010 SC (Supp) 787) approved the award passed by the Labour Court. Ratio of the law in M. Venugopal vs, Divisional Manager (AIR 1994 SC 1343) upon which reliance was placed by the Management was also explained and distinguished by the Hon'ble High Court by observing that when the appointment is for a fixed period, unless there is finding that power under Clause (bb) of Section 2(oo) was misused or vitiated by its mala fide exercise, it cannot be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that the power was misused by the management or the appointment for a fixed period was a colourable exercise of power.

20. There is also another authority, i.e. Satyapal vs PWD Special LPA No.,4726/2007 decided on 24.08.2006 by Hon'ble High Court of Delhi. It was also a case where decision of the learned Single Judge holding award dated 30.04.2004 of CGIT whereby the Tribunal has held termination of services of the workman to be illegal, being in breach of provisions of Section 25 of the Act, was assailed before the High Court. In the said case also, the workman had continuously worked from 20.08.1990 to 16.09.1993 and no notice before termination of his service was issued as required under Section 25 of the Act. Action of the management in terminating services of the workman Satpal was held to be illegal and unjustified. Management was ordered to pay 40% of back wages also, when the judge of the Hon'ble High Court of Delhi had upheld the award and it was thereafter matter was taken in special appeal by way of LPA before the Division Bench of Hon'ble Apex Court. In the said case also strong reliance was placed was placed by the management upon the case of Haryana State FCCW Store vs Ram Niwas and Anr. And General Manager, Haryana Roadways vs (2005 Vol.5 SCC 591). Hon'ble High Court after taking into consideration definition of 'retrenchment' as contained in Section 2(oo) (bb) of the Act as well as other provisions of the law, came to the conclusion that in the said case, management has invented a device to issue work orders for service of workman in some cases and was being extended from time to time as per requirements. This action of the management was held to be in complete derogation in law. It was held that this section cannot be invoked by the management in situation when the workman is in fixed employment or doing work of perennial nature. While discussing the case of Haryana State FCCW Store (supra), it was observed that the idea of introducing section 2(oo)(bb) of the Act was to meet a situation where workman is engaged for a very short period to do temporary type of work. In the said case two workers were engaged only for a short period of one month. Later on, their services were terminated after the entire stock lying in the open area was cleared. Thus, their engagement was for less than one year. It was in such circumstances that Hon'ble Apex Court held that disengagement/termination of the workman concerned did not amount to retrenchment. Resultantly, ratio of the said judgment cannot be applied to the case in hand when evidence on record is ample and clear to the effect that the workman herein was doing the work against regular job and management later on has appointed another employee in place of workman herein. In the case in hand, workman has admittedly worked for almost 5 years, as such in view of the ratio of law propounded in the aforesaid two authorities, there is no need to follow other authorities of other High Courts. It is now well settled position in law that subordinate Courts are required to follow judgements or orders of its High Court in letter and spirit and there is no need to follow judgement of another High Court where contrary view has been taken. Moreover, Hon'ble High Court has referred to the various judgements of the Hon'ble Apex Court wherein similar questions were involved.

21. The workman also placed reliance upon the case of Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Ltd. (2014 Lab.IC 2643) wherein Hon'ble Apex Court discussed in extenso provisions of section 2(oo)(bb) of the Act as well as similar provisions contained in UP ID Act. It was noticed by the Apex Court that services of the workman was terminated several times and he was subsequently employed again till his services were finally terminated. He has rendered more than 6 years of service, save the artificial breaks made by the management with an oblique motive so as to retain the appellant as temporary worker. Aforesaid conduct of the management was held to be unfair labour practice under Section 2(ra) of the Act which is not permissible in view of sections 25T and Section 25(U) of the Act read with entry in Serial No.10 in the V Schedule to the Act regarding unfair labour practice. It was the case of the workman that he has worked for six calendar years from the date of his appointment till termination of his services,

thus completing 240 days in each calendar year. Labour Court held termination of the job of the workman to be illegal, unjustified and ordered payment of full back wages. In writ appeal, High Court set aside the award of the Tribunal. When matter was taken to Apex Court, it was held to be exercise of excess jurisdiction by the High Court under Article 227 of the Constitution of India.

22. Lastly, on behalf of the workman, reliance was placed on SM Nilajkar vs. The District Manager, Karnataka (2003 Lab.IC 2273). It was a case where a number of workmen were engaged as casual labour for the purpose of extension of telecom facilities and their services were utilized for digging and laying of cables, erecting of poles and drawing of lines. Services of these workmen were terminated somewhere in the year 1985. Thereafter, they were not engaged on the said work. In the first round of litigation Hon'ble Apex Court directed the State Government to formulate a scheme under which all casual labourers who had rendered more than one year's continuous service could be absorbed. When these workmen were not finally re-engaged or absorbed in the job, they took the matter to the Industrial Tribunal and award was passed on 21.06.1999 by the Tribunal directing the employer to reinstate all the workmen into service with the benefit of continuity of service and with 50% back wages. The employer filed writ petition in the High Court and learned Single Judge of the High Court held that workers were not project employees as their appointments were not for any particular project. As such, case of such employee was not covered by sub clause (bb) of clause (oo) of Section 2 of the Act. Since the workman had served for more than 240 days in a calendar, their termination amounted to retrenchment, which was invalid for non-compliance of Section 25F of the Act. However, it was observed by the Hon'ble High Court that there was a delay of 7-9 years in raising the dispute, which was not promptly raised, as such the workmen were not held entitled to back wages. The employees again filed intra-court writ appeal before the Division Bench of High Court. It was admitted case of the parties that workers were employed by Telecom Department as casual labours in connection with the project for extension of telecom facilities and their services were utilized for digging, laying of coaxial cables and other sundry work. The project was completed sometime in the year 1986-87. Division Bench further held that case of the workman herein was in fact covered under sub clause (bb) of clause (oo) of Section 2 of the Act. It was a clear case of termination of services of the workmen as a result of non-renewal of contract of employment on the expiry of contract. Resultantly, question of compliance of Section 25F of the Act did not arise and the workmen could not be said to have been retrenched. Engagement of the workmen was on daily wages and only for the purpose of completion of the project undertaken by the Telecom Department at a given place. When the project stands completed, there is no question of retrenchment of the workmen whose contract stood expired. However, when matter was taken to the Apex Court, decision of the Division Bench of the Hon'ble High Court was set aside and that of learned Single Judge was restored except for the finding that the workmen were not project employees. Contention of the management that workmen were employed for general maintenance of Telecom Department against a specific project and for specific period was out-rightly rejected by the Apex Court. It was also held that engagement of workman on daily wages does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. Further, the Court went to observe that it was for the employer to prove that case of the workman was not covered by the definition of 'retrenchment' so as to attract applicability of the said sub-clause (bb) of clause (oo) of Section 2 of the Act. Consequently, in view of the ratio of law, in Officer Incharge Defence Standardization Cell (supra), Satyapal (supra), SM Nilajkar (supra) and Bhuvanesh Kumar Dwivedi(supra), there is no need to follow ration of judgements of the other High Courts, particularly when the case of the workman herein is fully covered by the judgement of Hon'ble Apex Court as well as Delhi High Court.

23. In the case in hand, it has come in the evidence of MW2 also that work of helper/sweeper are still vacant and recruitment was also made from time to time by the management to fill up the said post. If it was so, there was no occasion for the management to have terminated services of the claimant herein.

24. Plea of the management that no specific order of termination was required to be issued as it was work for a specific period, even if assumed for the sake of argument to be correct, the same would not help the management in any manner as there is ample evidence on record suggests that since 1989, claimant has been performing duties of cleaning and sweeping of the premises of the residential buildings of the Central Government regularly and continuously. Even the work in the present case is regular and perennial in nature and the same cannot be stated to be seasonal in nature. Moreover, as discussed above, engagement of the claimant herein is in contravention to the notification dated 30.07.2002. Thus, viewing the matter from any angle, management is guilty of violation of provisions of the Act as well as CLRA Act. The action of the management in not regularizing the services of Shri Raghbir engaged on work order basis is totally illegal and unjustified. Hence, the court is of the opinion that the claimant, Shri Raghbir, is liable to be regularized in service with all other consequential benefits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : April 25, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 27 जून, 2017

का.आ. 1571.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 112/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/454/1998-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1571.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 112/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. ECL and their workmen, received by the Central Government on 08.06.2017.

[No. L-22012/454/1998-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 112 OF 1999

PARTIES :

The management of New Kenda Colliery of M/s. ECL

V/s

Sri Biswanath Roy

Representatives :

For the Management : Sri P.K. Das, Learned Advocate

For the Union (Workman) : Sri Rakesh Kumar, Union Representative

Industry : Coal

State : West Bengal

Dated : 15.05.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/454/98-IR(CM-II)** dated 30.07.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDEULE

“Whether the action of the management of New Kenda Colliery of Kenda Area of M/s. E.C.Ltd. in dismissing Sh. Biswanath Roy, Driller, from services is legal and justified? If not, to what relief is the workman entitled? ”

1. Having received the Order **NO. L-22012/454/98-IR(CM-II)** dated 30.07.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **112 of 1999** was registered on 18.08.1999 / 21.09.2001. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The workman Sri Biswanath Roy has stated in his written statement that he was a permanent worker as Driller of New Kenda Colliery He was on unauthorized leave from 12.01.1992 to 17.01.1992 and he overstayed due to his

sickness. He was under treatment of Dr. B. B. Singh at Ranchi. He informed this fact during enquiry and also submitted treatment papers. But management dismissed him from service. Since it was not a case of unauthorized absence, so management could put his name on the Badli list or his annual increment should have been stopped as a mark of punishment, but management has taken harsh and extreme action and dismissed him from service. The punishment of dismissal is an extreme punishment and as per the judgment of the Hon'ble Supreme Court and directives of C.I.L. punishment should not be disproportionate to the nature of offence, but management violated the directives of the Hon'ble Supreme court and C.I.L. by awarding the punishment of dismissal. The 2nd Show Cause Notice was not served on him. Biswanath Roy suffered a lot being out of employment from the year 1994 till date. He should be allowed to resume his duty because he is at the stage of starvation. The workman has prayed that he should be reinstated in service with full back wages with all other consequential benefits.

3. The Agent of New Kenda Colliery of M/s. Eastern Coalfields Limited has alleged in his written statement that Sri Biswanath Roy, Ex-Driller of New Kenda Colliery of M/s. Eastern Coalfields Limited was absenting from duty since 21.01.2002 without any information and prior permission and as such he was chargesheeted by the management vide Chargesheet No. peers/NKC/CS/91/692 dated 27.07.1993 under clause 17(1)(n) of the Model Standing Order applicable to the Coal Mines. The delinquent workman has submitted reply to the Chargesheet. The explanation offered by the workman was found to be unsatisfactory and as such the management decided to hold domestic enquiry. The workman participated in the domestic enquiry and he was afforded all reasonable opportunity to defend his case in accordance with the principle of natural justice. The disciplinary authority after careful consideration of Chargesheet, Reply of workman, Enquiry Proceeding, Enquiry Report and other connected papers was fully satisfied with the same and an order of dismissal was passed against the ex-workman considering his past record. The Agent of New Kenda Colliery of M/s. Eastern Coalfields Limited has further denied that Sri Biswanath Roy was ill or he was under treatment of one Doctor at Ranchi or he informed this fact to the management. The management has already been declared as a sick industry and it is no longer possible on the part of the Management to retain the ex-employee in his service. The workman is not entitled to any relief. The punishment of dismissal is justified.

4. The workman has filed rejoinder written statement and stated that Sri Biswanath Roy was unauthorized absent from 12.01.1992 to 17.01.1992. He fell sick at his native place and started treatment. During enquiry the workman stated that he was mentally disturbed and due to this fact he was under treatment at Ranchi. The workman sent information about his sickness to the management. But the contention of the management is that as the coal industry is sick and they are not having requirement of the manpower is wrong. In fact management still require the manpower and management also considering the cases of dismissal for reinstatement of other dismissed worker. The punishment of dismissal is disproportionate to the alleged misconduct.

5. The workman has filed Xerox copy of treatment paper of Dr. B. B. Singh dated 19.01.1992, 10.05.1992, 17.11.1992, 22.05.1993 and 24.07.1993. The workman, Sri Biswanath Roy has filed affidavit in his examination-in-chief, he has been cross-examined by the learned advocate of New Kenda Colliery of M/s. Eastern Coalfields Limited.

The Agent of New Kenda Colliery of M/s. Eastern Coalfields Limited has not filed any documentary or oral evidence.

6. I have heard the arguments of Sri Rakesh Kumar, learned union representative appeared on behalf of the workman Sri Biswanath Roy and Sri P. K. Das, learned advocate appeared on behalf of the New Kenda Colliery of M/s. Eastern Coalfields Limited.

7. Sri Rakesh Kumar, learned union representative, appeared on behalf of workman and has argued that punishment of dismissal for absence of few months is too harsh and disproportionate. In fact, Sri Biswanath Roy was mentally ill and due to illness he could not attend his duty. On the other hand, Sri P. K. Das, learned advocate, appeared on behalf of New Kenda Colliery of M/s. Eastern Coalfields Limited has argued that unauthorized absence is one of the misconduct under Model Standing Order. The workman was unauthorized absent from duty. The domestic enquiry was conducted, his guilt was proved. The punishment of dismissal is justified.

8. It is admitted fact that Sri Biswanath Roy was an Ex-Driller of New Kenda Colliery of M/s. Eastern Coalfields Limited. He was a permanent worker of the company. Due to unauthorized absence domestic enquiry was conducted. He was held guilty and therefore he was dismissed from service.

9. An employee is under an obligation not to absent himself from work without good cause, during the time at which he is required to be at work by the terms of his contract of service. Absence without leave is misconduct in Certified Standing Order, warranting disciplinary action. Even if the workman is not absent from the employer's business premises, his absence from the specific place of duty, where he is required to be, without permission would also constitute as an act of misconduct. Therefore the absence of an employee from duty if it amounts to misconduct is inconsistent with faithful discharge of his duty which constitutes good cause for disciplinary proceeding.

10. Neither party to reference has filed any paper regarding domestic enquiry. It is relevant to mention that workman has not challenged the validity of enquiry proceeding. The then Presiding Officer of this Tribunal after hearing both the parties passed order on 12.10.2004 on merit and concluded that enquiry is fair, just and legal. Therefore the question of validity of enquiry has already been decided on 12.10.2004.

11. Now only one question remains to be answered, whether punishment of dismissal is justified in the facts and circumstances of the present reference?

12. The workman has alleged that he was mentally disturbed and sick and was under treatment of one Dr. B. B. Singh at Ranchi. This fact has been denied by the Agent of New Kenda Colliery of M/s. Eastern Coalfields Limited. The workman has filed some treatment papers, but these indicate that he has been prescribed some medicines, but there is no report regarding his illness. There is no report of clinical test. On perusal of these papers it does not anyway indicate that workman was ill due to his mental disturbance. His treatment paper does not inspire confidence. Therefore in view of the fact, the punishment of dismissal is not unjustified.

13. In view of the above discussion, the action of management of New Kenda Colliery of Kenda Area of M/s. Eastern Coalfields Limited in dismissing Sri Biswanath Roy, Driller from service is legal and justified. The workman is not entitled to any relief.

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 27 जून, 2017

का.आ. 1572.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 24/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/397/1999-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1572.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. ECL and their workmen, received by the Central Government on 08.06.2017.

[No. L-22012/397/1999-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 24 OF 2000

PARTIES :

The management of Dhemomain Colliery of M/s. ECL

V/s

Sri Lodhi Harijan

Representatives :

For the Management : Sri P.K. Das, Learned Advocate

For the Union (Workman) : Sri Kuldip Mahato, Union Representative

Industry : Coal

State : West Bengal

Dated : 18.05.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/397/99-IR(CM-II)** dated 29.02.2000 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Dhemomain Colliery in not providing employment to the dependent of Lodhi Harijan, being declared medically unfit is just and legal? If not, to what relief the workman is entitled? ”

1. Having received the Order **NO. L-22012/397/99-IR(CM-II)** dated 29.02.2000 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **24 of 2000** was registered on 13.03.2000 / 12.1.2001. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The dependent son of Sri Lodhi Harijan, ex-workman of Dhemomain Colliery of M/s. Eastern Coalfields Limited has filed written statement through Joint-Secretary of Koyala Mazdoor Congress. It has been alleged in the written statement that Sri Lodhi Harijan was Ex-Face Worker at Dhemomain Colliery of M/s. Eastern Coalfields Limited. He was declared medically unfit by Company's Medical Board with effect from 17.06.1991. He was further advised to submit application for employment to one dependent under Clause 9.4.3 of National Coal Wage Agreement-IV vide letter No. DMC/C-6/27/91/678 dated 17.06.1991. The workman, Sri Lodhi Harijan after being declared medically unfit did not work at all, nor it was possible for the management to allow any medically unfit worker to work in underground. To disown the claim of the worker for employment to one of his dependent, the management marked the attendance of the concerned workman though he did not physically work for the remaining period. The Clause 9.4.3 of National Coal Wage Agreement-IV does not prescribe to minimum period of loss of employment in case of medical unfitness. The workman referred one case of Sri Tarini Pandey, Ex-Security Guard who was also been declared medically unfit by Dhemomain Colliery of M/s. Eastern Coalfields Limited and by Arbitration award dated 24.08.1993 his dependent was offered employment. Sri Lodhi Harijan is also in the same circumstances cannot be discriminated and his dependent son cannot be denied employment. Sri Lodhi Harijan had 13 (Thirteen) days loss of employment due to being declared medically unfit. The Koyala Mazdoor Congress has prayed that Tribunal may direct the management of Dhemomain Colliery of M/s. Eastern Coalfields Limited to offer employment to the dependent son of Sri Lodhi Harijan, Ex Face worker under provision of Clause 9.4.3 of National Coal Wage Agreement-IV.

3. The Agent of Dhemomain Colliery of M/s. Eastern Coalfields Limited has alleged in his written statement that Sri Lodhi Harijan was declared medically unfit just before 13 (Thirteen) days prior to his retirement. Sri Lodhi Harijan was due for retirement on superannuation on and from 01.07.1991, but he was declared medically unfit just 13 (Thirteen) days before his retirement. The company never certified the loss of employment of concerned workman and claim for employment to the dependent was rightly rejected by the management. The action of the management is justified in not providing employment to the dependent of Sri Lodhi Harijan and the concerned workman is not entitled to any relief.

4. The workman has filed the following documents:-

(i) Photocopy of the Certificate of '*Gram Panchayat*' dated 23.05.2012, (ii) Photocopy of I.D. of Sri Lodhi Harijan, (iii) Photo copy of the Service Excerpts of Sri Lodhi Harijan, (iv) Photocopy of the Letter of Manager, Dhemomain Colliery of M/s. Eastern Coalfields Limited, Copy of affidavit, copy of transfer certificate of Shyamlal, son of Sri Lodhi Harijan and (v) Photocopy of the Arbitration Award dated 24.08.1993.

Sri Shyamlal Harijan, son of Sri Lodhi Harijan Ex-Face Worker has filed affidavit in his oral evidence. He has been cross-examined by the learned advocate of Dhemomain Colliery of M/s. Eastern Coalfields Limited.

Dhemomain Colliery of M/s. Eastern Coalfields Limited has not filed any documentary or oral evidence.

5. Sri Kuldip Mahato, learned union representative has filed written argument and also argued verbally. Sri P. K. Das, learned advocate for the Management is present and argued.

6. Sri Kuldip Mahato, learned union representative appeared on behalf of the workman has argued that Sri Lodhi Harijan was declared medically unfit on 17.06.1991, though after 17.06.1991 Sri Lodhi Harijan did not physically work at Colliery, but his attendance was marked by the management of Dhemomain Colliery of M/s. Eastern Coalfields Limited. As per Clause 9.4.3 of National Coal Wage Agreement-IV Sri Shyamlal Harijan, dependent son of Sri Lodhi Harijan is entitled for job. Sri Lodhi Harijan had loss of employment of 13 (Thirteen) days due to his sickness. In National Coal Wage Agreement-IV there is no whisper of minimum period of loss of employment in case of medical unfitness. This doctrine has been corroborated with the findings of Arbitration Award dated 24.08.1993 passed in favour of one Sri Tarini Pandey, Ex. Security Guard of same Dhemomain Colliery of M/s. Eastern Coalfields Limited.

7. It is admitted fact that Sri Lodhi Harijan had been working as Face Worker at Dhemomain Colliery of M/s. Eastern Coalfields Limited. It is also admitted fact that he was declared medically unfit on 17.06.1991. He was due to retire on 01.07.1991. The claimant has fortified his right on the basis of Clause 9.4.3 of National Coal Wage Agreement -IV. Clause 9.4.3 of National Coal Wage Agreement -IV provides as follows :-

(i) The disablement of the worker concerned should arise from injury or disease, be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.

(ii) In case of disablement arising out of general physical debility so certified by the Coal Company concerned, not arising out of injury or disease as in Para (i) above, the concerned employee will be eligible for the benefit under this Clause if the employee is up to the age of 58 years."

8. On perusal of the above Clause I find that there are two situations for disability; if any workman is permanently disabled by injury or disease and if it is certified by the Coal Company, there is no age limit. But such permanent disablement due to injury or disease must occur during the employment before retirement. But if any workman is disabled arising out of general physical disability not covered under Para (i) then he should be under 58 years of age.

9. The medical unfitness certificate has not been filed by the applicant. The Tribunal cannot arrive at a conclusion whether Sri Lodhi Harijan was permanently disabled due to injury or disease or whether his disablement was general physical disability. On perusal of written statement and affidavit of Shyamlal Harijan it appears that Sri Lodhi Harijan was if really declared medically unfit, then he must have declared medically unfit under Para (ii) of Clause 9.4.3 of National Coal Wage Agreement -IV. Therefore in such case his disability must have occurred before Sri Lodhi Harijan has attained the age of 58 years.

10. Compassionate appointment is a concept which has been evolved in service jurisprudence. To meet any unpleasant situation to an employee concerned due to sudden permanent disability, the injury or even death of sole bread-earner causes great financial hardship to dependent of sole bread-earner. This principle is founded on dependency and financial need caused by death or sudden permanent disability of a wage-earner while in service. It is not bonanza to be awarded to dependent without ensuring the required condition to be fulfilled. Appointment on compassionate ground does not mean entry in service from backdoor. The object of compassionate appointment is very pious for the welfare of dependent of workman, but it can never mean to allow entry in service through backdoor.

11. Sri Lodhi Harijan was at the fag end of his service when he was so-called declared medically unfit on 17.06.1991. He was due to retire on 01.07.1991 just after 13 (Thirteen) days. At the fag end of service generally the workman concerned and his family members prepare themselves monetarily and mentally for retirement. The dependent family members prepared for their job or livelihood well in advance because they are aware of this fact that bread-earner is going to retire very soon. In the present case, the dependent family members or the dependent son, Sri Shyamlal Harijan was aware that Sri Lodhi Harijan, his father was going to retire within less than 2 (Two) weeks. Such type of disability which occurs only 13 days, prior to retirement, in my opinion, will not result any loss of employment.

12. The dependent of Sri Lodhi Harijan is not entitled to have employment on compassionate ground as per provision of Clause 9.4.3 of National Coal Wage Agreement- IV.

13. The claimant has relied on award dated 24.08.1993. On perusal of the said award dated 24.08.1993, it transpires that the concerned workman Sri Tarini Pandey was suffering from Pulmonary Tuberculosis right from 1982, which was established from the certificate issued time to time by Sanctoria Hospital of M/s. Eastern Coalfields Limited. The Medical Board held on 12.04.1988 did not find him free from this disease. This circumstance indicates that Sri Tarini Pandey, Ex- Security Guard was suffering from Pulmonary Tuberculosis from a very long time. Considering all these facts, M/s. Eastern Coalfields Limited authority after six years declared him permanently disabled on 01.06.1988. But in the present reference there was no prior disease to Sri Lodhi Harijan. Sri Lodhi Harijan was declared medically unfit on 17.06.1991 just before 13 (Thirteen) days prior to his retirement. The fact of present reference is quite different from the relied Arbitration Award of Sri Tarini Pandey.

14. In view of above discussion the action of management of Dhemomain Colliery of M/s. Eastern Coalfields Limited in not proving employment to the dependent of Sri Lodhi Harijan is just and legal. The applicant is not entitled to any relief.

ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 27 जून, 2017

का.आ. 1573.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईपीएफओ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ सं. 36/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.06.2017 को प्राप्त हुआ था।

[सं. एल-42012/264/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1573.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2006) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of M/s. EPFO and their workmen, received by the Central Government on 05.06.2017.

[No. L-42012/264/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 AT MUMBAI

Camp: Goa

Present : Justice Surendra Vikram Singh Rathore, Presiding Officer

REFERENCE NO. CGIT-36 OF 2006

Employers in relation to the management of Employees Provident Fund Organization

And

Their workmen

Appearances :

For the first party/Management : Mr. Himesh Rajan Prakash, representative

For the second party/Workmen : No appearance

Goa, dated this the 21st day of April, 2017.

AWARD

This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act 1947 vide Government of India, Ministry of Labour New Delhi Order No.L-42012/264/2005 – IR(CM-II) dated 06.10.2006. The terms of reference given in the schedule are as follows:

“Whether the action of the management of Employees Provident Fund Organization in deducting two increments from the wages of Shri Devidas Amonkar is legal and justified? If not, to what relief is the workman entitled?”

Mr. Himesh Rajan Prakash, representative present for the management.

He has filed a letter which is taken on record whereby the Union has written to the first party that they are not interested in this case and the case may be dropped. The said letter is hereby taken on record and the proceedings are hereby dropped accordingly.

Reference is answered accordingly.

Let the record be consigned as per rules.

Justice S.V.S. RATHORE, Presiding Officer

नई दिल्ली, 27 जून, 2017

का.आ. 1574.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 94/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.06.2017 को प्राप्त हुआ था।

[सं. एल-22012/58/2006-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1574.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 94/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. ECL and their workmen, received by the Central Government on 08.06.2017.

[No. L-22012/58/2006-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 94 OF 2006

PARTIES :

The management of Central Kajora Colliery of M/s. ECL

V/s

Sri Narayan Dhangar

Representatives :

For the Management : Sri P. K. Goswami, Learned Advocate

For the Union (Workman) : Sri G. P. Mal, Learned Advocate

Industry : Coal

State : West Bengal

Dated : 19.05.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/58/2006-IR(CM-II)** dated 20.11.2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Dhemomain Colliery in not providing employment to the dependent of Lodhi Harijan, being declared medically unfit is just and legal? If not, to what relief the workman is entitled? ”

1. Having received the Order **NO. L-22012/58/2006-IR(CM-II)** dated 20.11.2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **94 of 2006** was

registered on 11.12.2006. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The workman Sri Narayan Dhangar has alleged in his written statement that he was a permanent employee of Central Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited. His father's name is Late Beja Dhangar. His U.M. No. is 56935. Due to illness the workman Sri Narayan Dhangar could not join duty with effect from 20.04.2003. He was under treatment of doctors. After being declared fit he reported for duty, but contrary to it, he was served with a copy of termination letter dated 27.01.2004. The workman was not issued any Chargesheet. He was not given sufficient opportunity to defend his case against the charge. The termination of workman is illegal. The workman belongs to Schedule Caste Community. The action of management for termination of service of workman is intentional, unjustified, illegal and biased.

3. The Agent of Central Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited has alleged in his written statement that Sri Narayan Dhangar was absent from duty without any information. On few occasions he had been chargesheeted for acts of unauthorized absence, vide Chargesheet No. CKC/P&IR/C-6/03/3279 dated 14.10.2003 under Clause 26.1, 26.11, 26.15, 26.23 & 26.29 of Certified Standing Order. The concerned workman did not care to reply the Chargesheet issued to him. He did not appear before the Enquiry Officer after service of notice. The Enquiry Officer after several adjournments proceeded ex-parte. In enquiry, the Enquiry Officer held Sri Narayan Dhangar guilty of the charge levelled against him. The Competent Authority after considering enquiry report as well as past record of workman found no grounds to show any leniency and passed the dismissal order. The attendance of concerned workman in 2001 was only 105 days, in the year 2002 106 days and up to August, 2003 it was only 8 days. He was found absent from duty from 29.07.2000 to 20.01.2001. He was allowed to join duty on 23.03.2001 after stopping two increments with cumulative effect. For the reasons of unauthorized absence from 07.06.2001 to 29.06.2001 he was allowed after warning. He committed the same type of misconduct by unauthorized absence from 24.08.2002 to 01.02.2003. Again he was allowed after final warning. The workman submitted sick certificate alleged to have been obtained from Central Hospital, Kalla for absence from 24.08.2002 to 01.02.2003 which was found fake after enquiry. The act of management in dismissing Sri Narayan Dhangar is justified and the workman is not entitled to any relief.

4. The workman has filed rejoinder written statement. The workman has alleged in his rejoinder that he was not served with any notice of enquiry. The contents of management are baseless. The workman was not given opportunity to defend his case. The management violated the Principle of Natural Justice. The enquiry was held ex-parte and the workman never remained absent willfully or intentionally. The workman was never issued any Chargesheet. The workman applied for his reinstatement on the basis of the Circular issued by M/s. Eastern Coalfields Limited being below 45 years of age and absence for less than nine months. But the management did not consider it willfully. The workman has prayed before this tribunal that management of M/s. Eastern Coalfields Limited may be directed to reinstate the workman in service with back wages.

5. The workman has not filed any documentary evidence.

The workman Sri Narayan Dhangar has filed affidavit in his oral evidence. He has been cross-examined by the learned Advocate of M/s. Eastern Coalfields Limited.

The Central Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited has filed documentary evidences as per list viz; (i) Photocopy of the Letter of dismissal, (ii) Photocopy of the Show cause dated 08.01.04, (iii) Photocopy of the Chargesheet No. 3279 dated 26.09.2003 / 14.10.2003 (iv) Photocopy of the Enquiry report – 6 pages, (v) Photocopy of the Enquiry proceeding – 5 pages (vi) Photocopy of the Office letter dated 08.04.2003 (vii) Photocopy of the Letter no. 1893 dated 30.01.2003 / 03.02.2003. (viii) Photocopy of the Medical Certificate dated 19.10.2002, (ix) Photocopy of the Medical Certificate dated 03.04.2003, (x) Photocopy of the Letter 8026 dated 26.02.2003. More so, Management has also filed (xi) Photocopy of letter No. 2393 dated 02/06/05.2003, (xii) Photocopy of the Letter No. 412 dated 20.05.2003, (xiii) Photocopy of the Letter No. 378(A) dated 23.04.2003, (xiv) Photocopy of the Letter No. 2690 dated 08.01.2004, (xv) Photocopy of the Letter No. 2852 dated 24.01.2004, (xvi) Photocopy of the Attendance sheet of different years.

M/s. Eastern Coalfields Limited has not been cross-examined any witness in his oral evidence.

6. I have heard the arguments of Sri G.P Mal, learned advocate appeared on behalf of the workman, Sri Narayan Dhangar and Sri P.K Goswami, learned advocate appeared on behalf of M/s. Eastern Coalfields Limited.

7. Sri G.P Mal, learned Advocate appeared on behalf of the workman has argued that Sri Narayan Dhangar was absent from duty for a period of 5½ (five and half) months under compelling circumstances being ill. He was never issued any notice of enquiry or any Chargesheet. Opportunity to defend himself was also not given to the workman.

The enquiry is at all biased, unjustified and illegal. On the other hand, Sri P.K. Goswami the learned Advocate appeared on behalf of management has argued that the workman had been a habitual absentee. He was previously absent for which he has been punished. The medical papers submitted by the workman were found to be fake. The workman did not participate in enquiry proceeding. The punishment of dismissal is justified.

8. It is not disputed that Sri Narayan Dhangar was a permanent employee of Central Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited. It is admitted fact that due to unauthorized absence he was dismissed from service after enquiry. As per workman the enquiry is devoid of principle of natural justice. He was not afforded reasonable opportunity to defend his case, which was denied by M/s. Eastern Coalfields Limited. The workman Sri Narayan Dhangar in Para- 3 of his rejoinder - written statement has alleged that he was not served any kind of notice of enquiry, even he was not served with Chargesheet. Whereas, the Enquiry Officer recorded in Page 1 and 2 of Enquiry Report that the notice was served on delinquent workman, but workman Sri Narayan Dhangar has refused to accept. No copy of notice or acknowledgement due has been filed on record. If Enquiry Officer was satisfied that delinquent workman was avoiding service of notice, then he can very well proceed ex-parte against delinquent workman. But copy of those documents regarding service or refusal of notice by delinquent must be filed on record. In order to be able to take part in the enquiry, the chargesheeted workman must have notice of the day, time and place of enquiry. Even if the workman fails to submit his reply to the Chargesheet, still then the Enquiry Officer is required to send due notice to delinquent workman informing the date time and place of enquiry . Service of Chargesheet and service of Notice of Enquiry are two different things Service of notice of enquiry is mandatory so that the delinquent workman may enable himself to cross examine the witness of management. Non compliance of these requirements would be violation of Principle of Natural Justice. It would not be proper that the workman should be called on any day without previous intimation and the enquiry should begin straightway. The Enquiry Officer has not recorded in findings on which date the notice was served on workman by refusal. The Enquiry Officer has not taken care to file copies of refusal notice by workman. It is settled law that it is the responsibility of employer / department to prove the misconduct of workman. The first date of enquiry was fixed for 10.11.2003, but due to non-appearance of workman the date was adjourned for 22 .11.2003. On that date the workman did not appear and the Enquiry Officer without any basis presumed the service by refusal and was pleased to proceed ex-parte against the delinquent workman. Regarding service of notice for 22.11.2003, no copy of postal receipt or A/D has been filed on record.

9. The workman was issued Chargesheet No.CKC/P&IR/C-6/03/3279 dated 14.10.2003.The Chargesheet has been framed on five counts :-

- (i) 26.29 : *Absence from duty beyond 10 days without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave without valid reasons.*
- (ii) 26.23 : *Habitual absence from duty without sufficient cause.*
- (iii) 26.01 : *Fraud & dishonesty in connection with the employer's business.*
- (iv) 26.15 : *Any breach of the Mines Act, 1952 Rules, Regulation, bye-laws there under.*
- (v) 26.11 : *Refusal to accept any Chargesheet or order or notice communicated in writing.*

10. The workman was required to submit his explanation within ten days after service of Chargesheet. On perusal of above Chargesheet it is very much apparent that workman was not supplied the copies of documents in connection with the charges levelled against him. Neither list of witness has been annexed nor mentioned in the Chargesheet.

11. Before proceeding with the domestic enquiry against a delinquent employee, the delinquent employee must be informed accurately of the charges levelled against him. It is the duty of the Employer / Enquiry Officer to supply the copies of documents which are intended to be relied by the Enquiry Officer during enquiry proceeding. If the details of the charges are not mentioned in the Chargesheet issued to the workman or if relevant particulars are not mentioned in the Chargesheet, then workman cannot defend himself effectively. If the charges are of the vague nature, then delinquent workman cannot submit proper explanation. If the charges are imprecise or indefinite, the person charged would not be able to understand them, and he cannot defend himself effectively. Consequently enquiry would not be fair and just enquiry. It seems that there is no detail or particular of the period of absence of the delinquent workman. So far as the charge in relation to fraud and dishonesty is concerned, there is no particular of fraud or dishonesty in the Chargesheet. So far as the charge in relation to Mines Act is concerned there are no particulars regarding violation. All the charges are of vague nature. The Hon'ble Apex Court in **Pawan Kumar Agarwala v/s General Manager-II & Appointing Authority State Bank of India & Others, 2016 (148) FLR 865** has held that :-

"If copies of documents and list of witnesses was not furnished to the workman during enquiry, the enquiry was vitiated on account of non compliance of statutory rules and violation of principle of Natural Justice."

12. On Second adjourned date of enquiry i.e. on 22.11.2003 the statement of management representative Sri T.K Mondal, Clerk was recorded. The Enquiry Officer examined single witness Sri T.K. Mondal on 22.11.2003. The enquiry concluded on 22.11.2003 even without fixing a date for cross-examination by delinquent. Even if it is presumed that after service of enquiry notice, the workman did not turn up to participate in the enquiry proceeding, even then the Enquiry Officer was required to fix a next date for cross-examination of the workman. Even no date was fixed for defence evidence of workman. If delinquent workman did not appear after service of notice he will lose opportunity of cross-examination, but still he has right to lead his defence evidence. **The Hon'ble Apex Court in State of U. P. v/s Saroj Kumar Sinha, 2010 (124) FLR 857** has held that :-

"If workman after service of notice does not appear in the enquiry proceeding he will lose the benefit of cross examination, but still he has right to lead his defence evidence. Hon'ble Apex Court has held that by virtue of Article 311(2) of Constitution of India, the departmental enquiry has to be conducted in accordance with the principle of Natural Justice."

13. It appears from the record that the delinquent workman was previous absentee. He was absent from 24.08.2002, He was issued Chargesheet No. CKC/P&IR/C-6/19/02/260 dated 18.10.2002 and the workman participated in enquiry proceeding. He submitted his medical papers regarding treatment for his absence. The genuineness of medical certificate was not verified by Enquiry Officer during enquiry proceeding. The workman was allowed to join duty with issuance of last and final warning by Letter No. CKC/P&IR/C-6/03/2241 dated 08.04.2003. The delinquent Sri Narayan Dhangar joined duty on 08.04.2003. Later on the medical papers filed by the delinquent workman inn enquiry in Charge sheet No. 260 was found to be false. For this act of fraud and dishonesty, the delinquent workman was issued Chargesheet No. CKC/P&IR/C-6/03/368 dated 15.04.2003. Even in this Chargesheet there is neither mention of any document or witness nor any copy of document was supplied to delinquent workman. In Chargesheet No. CKC/P&IR/C-6/03/368 dated 15.04.2003 the departmental enquiry proceeded ex-parte against the workman. The workman was held guilty by the Enquiry Officer. But no punishment was awarded to delinquent workman. For absence from 20.04.2003 Charge sheet No. CKC/P&IR/C-6/03/3279 dated 14.10.2003 was issued to workman for his unauthorized absence, though the delinquent workman for submitting false treatment papers and for this act of fraud and dishonesty was already issued Chargesheet No. CKC/P&IR/C-6/03/368 dated 15.04.2003. The charge No CKC/P&IR/C-6/03/368 dated 15.04.2003 was enquired by the Enquiry Officer. He was found guilty, but it was kept in abeyance. No order has been passed, as per record in connection with the enquiry report. But in Chargesheet No. CKC/P&IR/C-6/03/3279 dated 14.10.2003 he had been again charged for same misconduct for which he had already chargesheeted and enquired into. This reflects that delinquent workman had been twice chargesheeted and twice departmental enquiry had been conducted for same misconduct. This is impermissible in law.

14. In **State of Tamil Nadu v/s Dr. A.S. Radhakrishnan 2016 (150) FLR page 828**, the Hon'ble Madras High Court has held that :-

"In disciplinary proceeding disciplinary authority would have three options; can accept enquiry report and drop further action, differ with and come to different conclusion, set-a-side findings of Enquiry Officer and order denovo in enquiry. But departmental enquiry commenced for second time is completely without jurisdiction."

In view of the conclusion of the Hon'ble Madras High Court second enquiry is without jurisdiction for same act of misconduct.

15. Right to livelihood is an important right. Right of livelihood can be taken up by valid, lawful and bona fide enquiry conducted in compliance with the Principle of Natural Justice. Without conducting an impartial domestic enquiry the punishment of dismissal is illegal and unjustified, rather too harsh, disproportionate and shocking to the conscience which ought to be set aside.

16. The workman has pleaded in Para- 10 & 11 of his written statement that he belongs to Schedule Caste Community. He is jobless and his condition is very miserable. These facts have not been challenged by the Agent of Central Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited in his written statement. The workman has filed affidavit in his oral evidence. The workman has alleged in Para-12 of his affidavit that he is unemployed and without any source of income. The workman has been cross-examined by the learned Advocate of M/s. Eastern Coalfields Limited, but his evidence is un-shattered. The workman has alleged in Para- 1 of his written statement that his date of birth is 15.12.1967 and his date of appointment is 25.09.1989. It seems that at present his age would be about 50 years and he has completed 27 years of service. Keeping in view his age and length of service and the fact of his unemployment there is no possibility of getting alternate employment anywhere else.

17. The Hon'ble Supreme Court in **Pawan Kumar Agarwala v/s General Manager-II & / Appointing Authority State Bank of India & Others, 2016 (148) FLR 865** has relied on **Deepali Gundu Surwase v/s Kranti Junior Adhyapak Mahavidyalaya and Others,(2013) 10 SCC 324** :-

"In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. Ordinarily, an employee/ workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments"

18. Therefore in view of the law propounded by the Hon'ble Supreme Court the concerned workman Sri Narayan Dhangar is entitled to get full back wages from the date of dismissal till his reinstatement. It is settled law that consequential benefits do not mean only back wages it includes much more things besides back wages such as promotion, fixation of seniority etc.

19. In view of above discussion, the action of management of M/s. Eastern Coalfields Limited in dismissing Sri Narayan Dhangar with effect from 27.01.2004 is illegal and unjustified. Management of Central Kajora Colliery under Kajora Area of M/s. Eastern Coalfields Limited is directed to reinstate Sri Narayan Dhangar in service with full back wages from the order of dismissal i.e. from 27.01.2004 till his reinstatement. It is further directed that Sri Narayan Dhangar will be entitled to get all consequential service benefits. Sri Narayan Dhangar will be imposed a punishment of stopping of 2 (Two) annual increments with cumulative effect.

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 27 जून, 2017

का.आ. 1575.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डीडब्ल्यूसीडब्ल्यू के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुवंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 101/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.06.2017 को प्राप्त हुआ था।

[सं. एल-42012/119/2001-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 27th June, 2017

S.O. 1575.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 101/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of M/s. DWCW and their workmen, received by the Central Government on 05.06.2017.

[No. L-42012/119/2001-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 101/2002

Ref.No. L-42012/119/2001-IR(CM-II) dated 03.06.2003

BETWEEN

Sri Anurag Soni
R/o 3/695

Vikas Nagar
Lucknow (U.P.)

AND

1. The Asstt. Technical Advisor
Dept. of Women & Child Welfare Development
Community Food & Nutrition Extension Unit
Lucknow

AWARD

1 By order No. L-42012/119/2001-IR(CM-II) dated 03.06.2002 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Anurag Soni, R/o 3/695, Vikas Nagar, Lucknow and the Asstt. Technical Advisor, Deptt. of Women & Child Welfare Developmen, Community Food & Nutrition Extension Unit, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF DEPTT. OF WOMEN AND CHILD WELFARE, COMMUNITY FOOD & NUTRITION EXTENSION UNIT, VIKAS NAGAR, LUCKNOW IN TERMINATING THE SERVICES OF SRI ANURAG SONI VIDE ORDER DATED 23.11.1999 IS LEGAL AND JUSTIFIED?” IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED TO?”

3. As per the claim statement W1/9the workman has stated in brief that he was appointed on the post of Driver on 10.12.1998 by Sri G.N. Pandey, Asstt. Technical Advisor of the opposite party office @ 81.90 per day but no appointment letter was issued. He has asserted that he has continuously worked as per directions of his authorities w.e.f. 10.12.1998 to 22.11.99, and there was no complaint regarding his work and conduct, several certificates pertaining to his working days was issued by the different authorities. The workman stressed that he was having a valid license for heavy and light vehicle, he was educated for the job and had passed VIII, his name was registered in Employment Exchange since he was having 2 years experience for Driving of vehicle, he was appointed as Daily Wage Driver. Subsequently he was employed to drive the official jeep w.e.f. 01.01.1999, on the vacant post.

4. The petitioner has further alleged that ignoring his 240 days continuously satisfactory services, in violation of provision of Section 25F of the I.D. Act., his services were terminated on 22.11.1999 without any prior notice, salary in lieu of notice or retrenchment compensation was also not paid to him, no written termination order was ever issued given to him, the conduct of the opposite party was violative of the provisions of I.D. Act., and unfair labour practice was clearly reflected. The workman has asserted that he had moved application dated 01.06.1999 for his regularization but it was not considered while another person Sri Rajendra Kumar Dhama, junior to the workman was given appointment and the petitioner was removed from service. The principle of “First Come Last Go” was not followed by the management, statutory provisions of the Constitution of India were also ignored. Directions given by the Hon’ble Supreme Court and Hon’ble High Court regarding regularization of service of those employees who have worked for more than six months or 240 days during one year, were not followed by the management. The petitioner has alleged that his salary for the period w.e.f. 13.9.1999 to 11.11.1999 has also not paid despite his several applications. Applications sent by the petitioner for his appointment was rejected and some other person given undue benefit by the management. The workman has further requested that delay if any is because of the conduct of the management and the petitioner should not suffer on this cause. With the aforesaid pleadings request has been made to set aside the service order dated 22.11.1999 and to reinstate the workman with full back wages alongwith consequential benefits. etc.

5. The management has filed written statement M-16. The opposite party has submitted that the petitioner is not covered under the definition “Workman” as envisaged in Section 2(s) of the I.D. Act., the aim and object of the opposite party has also been referred in the written statement. The management has admitted that the petitioner had worked intermittently from 10.12.1998 to 22.11.1999 as per the break given in the para 22 of the written statement, and defacto the petitioner has worked only for 231 days and accordingly provisions of Section 25F of the I.D. Act. will not be attracted. When regular driver joined the petitioner was not called to work since his services was not required. The opposite party has emphasized the petitioner had not completed 240 days in the year, so he is not entitled for notice, pay and retrenchment compensation.

6. The opposite party has asserted that it is not an “Industry” as per the provisions of the I.D. Act., the concerned petitioner is not entitled to get any benefit under the provisions of Section 25F, G, H of the I.D. Act. The opposite party has further asserted that the post of Staff Car Driver at Lucknow Unit is regular one and is duly filled by complying relevant recruitment Rules and the petitioner was in fact engaged by way of adhoc/stop gap arrangement on daily wage basis. The petitioner has prayed to declare in the light of the pronoucements of Hon’ble Apex Court

that the petitioner is not entitled for any benefit under the I.D. Act., activities conducted by opposite party determine have annexed alongwith written statement.

7. Later on with strong denial of the contrary facts mentioned in the written statement, while reiterating the pleas taken in the claim statement, the workman has filed rejoinder W-18 dated 01.09.2003.

8. After heard both the parties, the following issues were framed by then Hon'ble Judge/Presiding Officer, vide order dated 03.10.2003;

1. Whether the worker: Anurag Soni is a worker and alleged the OP is an industry as defined in ID act as alleged by the worker in his statement of claim in para 15.
2. Whether the worker has worked as driver since 10.12.1998 to 22.12.1999 as alleged by him and whether he has completed 240 days of working as alleged by the worker;
3. Whether the opposite party is sovereign body as alleged by the Opposite party.
4. Whether the worker is entitled to any relief? If so its effect.

9. The petitioner has filed certain documents as per list C-35 dated 16.5.2005, C-53 dated 15.2.2007 and C-62 dated 6.4.2009.

10. The management has filed certain documents as per application/listC-20 dated 31.07.2003, C-25, M-26 (C-26) dated 3.10.2003. Further opposite party has filed documents as per list C-38,56,58 57 dated 28.05.2007.

11. The petitioner Sri Anurag Soni has adduced himself in evidence he was thoroughly cross examined on behalf of the management.

12. The management has filed affidavit A-50 of Mohd. Nauman, A-55 of Sri GN Pandey and Sri Jagdish Prasad. Management witness were duly cross examined on behalf of the workman.

13. Arguments of learned AR of both the parties have been heard at length. Record has been scanned thoroughly.

Learned AR for the workman has relied upon the following Rulings;

1. WP No. 14047/11, 525/12 Director General, Prasar Bharti Broadcasting Corporation of India, Doordarshan Kendra and other vs PO,CGIT, Chennai judgment dated 19.2.2015
2. (2008) 8,SCC Maharashtra State Road Transport Corporation and another Vs Casteribe Rajya Parivahan Karmchari Sanghatana page 556.
3. (2008) 4, CTC Hindustan Petroleum Corporation Ltd. VS PO,CGIT page 819.

14. Learned AR for the management submits that the above rulings do not apply to this case.

15. Learned AR for the opposite party has referred the following citations;

1. 1978 LIC, page 467 hon'ble Supreme Court
2. 1996 SCC (L&S) State of UP Vs Arun Kumar Singh page 197.
3. 1997 SCC (L&S) A.Kumar Vs State of Bihar Page 267.

16. Learned AR for the workman asserts that the aforesaid citations are not relevant in the context of the matter in issue.

17. The petitioner has claimed him to have been appointed on the post of Driver w.e.f. 10.12.1998 @ Rs.81.90/- per day and had worked continuously upto 22.11.1999. Learned AR for the management has stressed that petitioner is not covered under the definition of workman, neither the opposite party is an industry. The management has asserted that the opposite party is sovereign body and can not be treated as industry.

18. The management has admitted that the petitioner had worked for 231 days in all, but intermittently and he was required to work as and when their need for driving the official Jeep.

19. Section 2(s) of the I.D. Act. reads as under:

“Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

20. The nature of duties performed by the petitioner is admitted to both the parties. Undoubtedly he was required to drive the official vehicle. The definition of the workman is self explanatory and there is no ambiguity to create any confusion. The management could not support its argument by any cogent factual evidence legal pronouncement of hon'ble court, so as to treat the workman out side the perview of Section 2(s) of the I.D. Act. It is quite evident from the perusal of the record in the light of the scope elaborated by the I.D. Act. that the petitioner is covered under the definition of the “workman”.

21. The management has further emphasized that it is office of Union of India, Ministry of Human Resource Development, New Delhi and its object to uplift and development of Women and Children of the country. Even if this argument is admitted, simply since the opposite party states that it is sovereign body, the nature of work, comprehensively being conducted under the supervisory perview of the opposite party is quite material. We should give wider possible cannotation. Term “industry” Hon’ble Supreme Court has emphasized that broad and liberal and not the rigid and doctrinaire approach should be adopted to determine whether party unit or office is industry or not. In the present case opposite party is treated as an industry.

22. The following prouncements in this regard are quite relevant;

1. 1994, SCC (L&S) H.R. Adyanthaya vs Sandoz page 1283.
2. 1983, SCC (L&S) SK Verma Vs Mahesh Chandra page 510 para 13.
3. 1988, SCC (CT) AR Antulay Vs R.S. Nayak page 372.

23. Hence issue no.1 & 3 are decided in favour of the petitioner workman accordingly.

24. In para 2 and 22 of the written statement, the management has admitted that since 10.12.1998 to 22.11.1998 the workman has performed the duties for 231 days. As per the allegations of the petitioner his were orally terminated w.e.f. 22.11.1999, Therefore, the crucial order the preceeding one year from 22.11.1999.

25. In this regard following documents are quite material;

1. C-35/12, certificate dated 19.8.1999 given by Sri G.N. Pandey, the then Asstt. Technical Advisor shows that the petitioner had worked as daily wage driver w.e.f. 01.01.1999 to 19.08.1999.
2. C-35/13 letter dated 15.11.1999 addressed to Dy. Technical Advisor sent by Sri G.N. Pandey, the then Asstt. Technical Advisor reveals that the petitioner had worked for 34 days from 13.09.1999 to 16.10.1999.
3. C-35/14, another letter dated 15.11.1999 by Sri GN Pandey, Asstt. Technical Advisor to Dy.Tech. Advisor shows that the petitioner had worked from 15 days in the period running from 18.10.1999 to 11.11.1999.

26. All these 3 documents have been denied by the opposite rather specifically endorsement has been made by learned AR “Formal proof dispensed with” and learned AR has put his signature and date on this endorsement.

27. The workman has supported his claim statement and rejoinder in the statement on oath adduced before this Court. Affidavit and cross examination of management witness is also very important.

28. Mohd. Nauman the then Dy.Technical Advisor has filed his affidavit A-50 before this Court but he has no were claimed specifically that the documents submitted by the workman are forged and fabricated. Photo copies of log book C-26 have been confronted with witness in the cross examination. The petitioner has performed his duties during Election Period as well.

29. Similarly Sri GN Pandey, the then Asstt. Technical Advisor in his affidavit A-55 has not specifically asserted that all the documents submitted by the petitioner are forged and fabricated. Learned AR for the workman has comprehensively cross examined Sri G.N. Pandey. Photo copy of the log book has also been confronted. Paper No. C-35/12 the certificate signed by Sri GN Pandey has been admitted by him in the cross examination. He has also

admitted on page 5 that at the time of vacancy being advertised for the post of Driver the petitioner was working in his office as daily wage driver.

30. Documents furnished by the petitioner and perused by learned AR of the management are very crucial. The management has disposed with the formal proof of the aforesaid document. Several documents have been filed by the management also. Besides other documents, if the period is calculated pertaining to the documents C-35/12,35/13 and 35/14, it is quite clear that the workman had worked for more than 240 days in the preceding one year from 22.11.1999. Principle laid down by the Hon'ble Supreme Court in the following cases, in addition to the citations referred here in above is noteworthy.

1. (2002), 3 SCC, R.F.O. vs S.T. Hadimani Page 25.
2. (2005), 8 SCC, Surendra Nagar District Panchyat Vs Jetha Bhai Pitambarbhai Page 450.
3. (2006) 1, SCC, R.M.Yellati Vs Executive Engineer, Page 106.
4. (2010) 1 SCC (L&S) Jagbir Singh Vs Haryana State Agriculture Board, page 545.

31. After having heard the intellect arguments of both the learned ARs of the rival parties, and perusal of the record, keeping in view the pronouncements of hon'ble Supreme Court, it is inferred that the action of the management in terminating the services of the petitioner Sri Anurag Soni vide order dated 23.11.1999, can not be treated as legal or justified. The opposite party is directed to reinstate him accordingly and to pay 50% of the back wages, with continuity of service and consequential benefits as per Rule. If the sum due is not paid to the petitioner within 10 weeks from the date of notification of the award, the management shall be liable to pay interest @ 6% per annum to the petitioner workman.

32. Award as above.

LUCKNOW

24th May, 2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 27 जून, 2017

का.आ. 1576.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 जुलाई, 2017 को उस तारीख के रूप में नियत करती है, जिसे उक्त अधिनियम के अध्याय IV (धारा 44 व 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) तथा अध्याय V और VI [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबंध असम राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

क्रम सं.	राज्य	जिला	राजस्व केन्द्र
1	असम	धेमाजी	धेमाजी (सदर)

[सं. एस-38013/02/2017-एस.एस.-I]

अजय मलिक, अवर सचिव

New Delhi, the 27th June, 2017

S.O. 1576.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st July, 2017 as the date on which the provisions of Chapter-IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following Areas in the State of West Bengal namely :—

Sl. No.	State	District	All the areas falling under
1	Assam	Dhemaji	Dhemaji (Sadar)

[No. S-38013/02/2017-S.S.-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 27 जून, 2017

का.आ. 1577.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 जुलाई, 2017 को उस तारीख के रूप में नियत करती है, जिसे उक्त अधिनियम के अध्याय IV (धारा 44 व 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) तथा अध्याय V और VI [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबंध त्रिपुरा राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

राज्य	जिला
त्रिपुरा	पश्चिम त्रिपुरा

[सं. एस-38013/11/2017-एस.एस.-I]

अजय मलिक, अवर सचिव

New Delhi, the 27th June, 2017

S.O. 1577.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st July, 2017 as the date on which the provisions of Chapter-IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following Areas (including already implemented areas) in the State of Tripura namely :—

State	District
Tripura	West Tripura

[No. S-38013/11/2017-S.S.-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 27 जून, 2017

का.आ. 1578.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 जुलाई, 2017 को उस तारीख के रूप में नियत करती है, जिसे उक्त अधिनियम के अध्याय IV (धारा 44 व 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) तथा अध्याय V और VI [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबंध त्रिपुरा राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

क्रम सं.	राज्य	जिला	राजस्व केन्द्र
1.	त्रिपुरा	उत्तर त्रिपुरा	धरमानगर म्यूनिसिपल कांडसिल
2.	त्रिपुरा	सिपाहीजाला	विसालगढ़ सब-डिविजन
3.	त्रिपुरा	धलाई	अमबासा म्यूनिसिपल कांडसिल
4.	त्रिपुरा	गोमाती	उदयपुर म्यूनिसिपल कांडसिल

[सं. एस-38013/11/2017-एस.एस.-I]

अजय मलिक, अवर सचिव

New Delhi, the 27th June, 2017

S.O. 1578.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st July, 2017 as the date on which the provisions of Chapter-IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following Areas in the State of West Bengal namely :—

Sl. No.	State	District	All the areas falling under
1.	Tripura	North Tripura	Dharm Nagar Municipal Council
2.	Tripura	Sipahijala	Bishalgarh Sub-Division
3.	Tripura	Dhalai	Ambassa Municipal Council
4.	Tripura	Gomati	Udaipur Municipal Council

[No. S-38013/11/2017-S.S.-I]

AJAY MALIK, Under Secy.